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Unsecured Creditors

9  
10 **UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

11 In re:  
12 BORREGO COMMUNITY  
13 HEALTH FOUNDATION,  
14 Debtor and Debtor In Possession.

Case No. 22-02384  
Chapter 11 Case

**FIRST AMENDED JOINT COMBINED  
DISCLOSURE STATEMENT AND  
CHAPTER 11 PLAN OF LIQUIDATION  
OF BORREGO COMMUNITY HEALTH  
FOUNDATION**

Judge: Hon. Laura S. Taylor

Hearing:

Date: January 17, 2024  
Time: 10:00 a.m.  
Place: Department 3

DENTONS US LLP  
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**DISCLAIMERS**

EACH HOLDER OF A CLAIM AGAINST THE DEBTOR ENTITLED TO VOTE TO ACCEPT OR REJECT THE COMBINED PLAN AND DISCLOSURE STATEMENT SHOULD READ THE COMBINED PLAN AND DISCLOSURE STATEMENT IN ITS ENTIRETY BEFORE VOTING. NO SOLICITATION OF VOTES TO ACCEPT OR REJECT THE COMBINED PLAN AND DISCLOSURE STATEMENT MAY BE MADE EXCEPT PURSUANT TO THE TERMS HEREOF AND SECTIONS 1121 AND 1125 OF THE BANKRUPTCY CODE.<sup>1</sup> IF YOU ARE ENTITLED TO VOTE TO ACCEPT THE COMBINED PLAN AND DISCLOSURE STATEMENT, YOU ARE RECEIVING A BALLOT WITH YOUR NOTICE OF THE COMBINED PLAN AND DISCLOSURE STATEMENT. THE DEBTOR URGES YOU TO VOTE TO ACCEPT THE COMBINED PLAN AND DISCLOSURE STATEMENT. THIS COMBINED PLAN AND DISCLOSURE STATEMENT IS JOINTLY PROPOSED WITH THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS (THE “COMMITTEE”) WHICH SUPPORTS THE COMBINED PLAN AND DISCLOSURE STATEMENT AND URGES CREDITORS IN CLASS 3 TO VOTE TO ACCEPT THE COMBINED PLAN AND DISCLOSURE STATEMENT.

THE COMBINED PLAN AND DISCLOSURE STATEMENT HAS BEEN PREPARED IN ACCORDANCE WITH §§ 1121 AND 1125 AND BANKRUPTCY RULES 3016 AND 3017, AND NOT IN ACCORDANCE WITH FEDERAL OR STATE SECURITIES LAWS OR OTHER APPLICABLE NON-BANKRUPTCY LAW. PERSONS OR ENTITIES TRADING IN OR OTHERWISE PURCHASING, SELLING, OR TRANSFERRING CLAIMS AGAINST THE DEBTOR SHOULD EVALUATE THE COMBINED PLAN AND DISCLOSURE STATEMENT IN LIGHT OF THE PURPOSE FOR WHICH IT WAS PREPARED. THE COMBINED PLAN AND DISCLOSURE STATEMENT SHALL NOT BE CONSTRUED TO BE ADVICE ON THE TAX, SECURITIES, OR OTHER LEGAL EFFECTS OF THE COMBINED PLAN AND DISCLOSURE STATEMENT AS TO HOLDERS OF CLAIMS AGAINST THE DEBTOR. YOU SHOULD CONSULT YOUR PERSONAL COUNSEL OR TAX ADVISOR ON ANY QUESTIONS OR CONCERNS RESPECTING TAX, SECURITIES, OR OTHER LEGAL CONSEQUENCES OF THE COMBINED PLAN AND

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<sup>1</sup> All references to section or chapter herein are to the Bankruptcy Code, 11 U.S.C. §§ 101, *et seq.*, as amended. All references to “Bankruptcy Rules” are to the Federal Rules of Bankruptcy Procedure.



**DISCLOSURE STATEMENT.**

**THE COMBINED PLAN AND DISCLOSURE STATEMENT CONTAINS SUMMARIES OF CERTAIN STATUTORY PROVISIONS, DOCUMENTS RELATED TO THE COMBINED PLAN AND DISCLOSURE STATEMENT, EVENTS IN THE CHAPTER 11 CASE, AND FINANCIAL INFORMATION. ALTHOUGH THE DEBTOR AND THE COMMITTEE BELIEVE THAT THE STATEMENTS AND DESCRIPTIONS CONTAINED IN THE COMBINED PLAN AND DISCLOSURE STATEMENT ARE TRUE AND ACCURATE, THEY ARE QUALIFIED TO THE EXTENT THAT THEY DO NOT SET FORTH THE ENTIRE TEXT OF THE DOCUMENTS RELATED TO THE COMBINED PLAN AND DISCLOSURE STATEMENT AND APPLICABLE STATUTORY PROVISIONS. THE TERMS OF THE DOCUMENTS RELATED TO THE COMBINED PLAN AND DISCLOSURE STATEMENT AND APPLICABLE STATUTES GOVERN IN THE EVENT OF ANY DISCREPANCY WITH THE COMBINED PLAN AND DISCLOSURE STATEMENT. CREDITORS AND OTHER INTERESTED PARTIES SHOULD READ THE COMBINED PLAN AND DISCLOSURE STATEMENT, THE DOCUMENTS RELATED TO THE COMBINED PLAN AND DISCLOSURE STATEMENT, AND THE APPLICABLE STATUTES THEMSELVES FOR THE FULL AND COMPLETE STATEMENTS OF SUCH TERMS AND PROVISIONS.**

**THE FACTUAL STATEMENTS AND REPRESENTATIONS CONTAINED IN THE COMBINED PLAN AND DISCLOSURE STATEMENT ARE MADE BY THE DEBTOR AND THE COMMITTEE AS OF THE DATE HEREOF, UNLESS OTHERWISE SPECIFIED, AND THE DEBTOR AND THE COMMITTEE DISCLAIM ANY OBLIGATION TO UPDATE ANY SUCH STATEMENTS AFTER THE SOLICITATION OF VOTES TO ACCEPT OR REJECT THE COMBINED PLAN AND DISCLOSURE STATEMENT. THE DELIVERY OF THE COMBINED PLAN AND DISCLOSURE STATEMENT SHALL NOT BE DEEMED OR CONSTRUED TO CREATE ANY IMPLICATION THAT THE INFORMATION CONTAINED HEREIN IS CORRECT AT ANY TIME AFTER THE DATE HEREOF.**

**THE FINANCIAL INFORMATION CONTAINED HEREIN HAS NOT BEEN AUDITED BY A CERTIFIED PUBLIC ACCOUNTANT AND HAS NOT NECESSARILY BEEN PREPARED IN ACCORDANCE WITH GENERALLY ACCEPTED ACCOUNTING PRINCIPLES.**

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1 ALL FORWARD-LOOKING STATEMENTS CONTAINED HEREIN  
2 OR OTHERWISE MADE BY THE DEBTOR OR THE COMMITTEE  
3 INVOLVE MATERIAL RISKS AND UNCERTAINTIES AND ARE SUBJECT  
4 TO CHANGE BASED ON NUMEROUS FACTORS, INCLUDING FACTORS  
5 THAT ARE BEYOND THE DEBTOR'S CONTROL. ACCORDINGLY, THE  
6 DEBTOR'S FUTURE PERFORMANCE AND FINANCIAL RESULTS MAY  
7 DIFFER MATERIALLY FROM THOSE EXPRESSED OR IMPLIED IN ANY  
8 SUCH FORWARD-LOOKING STATEMENTS. SUCH FACTORS INCLUDE,  
9 BUT ARE NOT LIMITED TO, THOSE DESCRIBED IN THE COMBINED  
10 PLAN AND DISCLOSURE STATEMENT. THE DEBTOR AND THE  
11 COMMITTEE DO NOT INTEND TO UPDATE OR REVISE THEIR  
12 FORWARD-LOOKING STATEMENTS EVEN IF EXPERIENCE OR  
13 FUTURE CHANGES MAKE IT CLEAR THAT ANY PROJECTED RESULTS  
14 EXPRESSED OR IMPLIED THEREIN WILL NOT BE REALIZED.

15 ANY PROJECTED RECOVERIES TO CREDITORS SET FORTH IN  
16 THIS DISCLOSURE STATEMENT ARE BASED UPON THE ANALYSES  
17 PERFORMED BY THE DEBTOR AND ITS ADVISORS. ALTHOUGH THE  
18 DEBTOR AND ITS ADVISORS HAVE MADE EVERY EFFORT TO VERIFY  
19 THE ACCURACY OF THE INFORMATION PRESENTED HEREIN, THE  
20 DEBTOR AND ITS ADVISORS CANNOT MAKE ANY REPRESENTATIONS  
21 OR WARRANTIES REGARDING THE ACCURACY OF THIS  
22 INFORMATION.

23 IN CONNECTION WITH THE DEBTOR'S AND THE COMMITTEE'S  
24 SOLICITATION OF ACCEPTANCES OF THE COMBINED PLAN AND  
25 DISCLOSURE STATEMENT PURSUANT TO § 1126(b), THE DEBTOR AND  
26 THE COMMITTEE ARE FURNISHING A SOLICITATION PACKAGE,  
27 CONSISTING OF THE COMBINED PLAN AND DISCLOSURE  
28 STATEMENT, THE EXHIBIT A HERETO, CONFIRMATION NOTICE,  
AND A BALLOT AND/OR A RELEASE OPT-OUT ELECTION FORM, AS  
APPLICABLE, TO EACH RECORD HOLDER OF CLAIMS ELIGIBLE TO  
VOTE OR ITS COUNSEL. THE COMBINED PLAN AND DISCLOSURE  
STATEMENT IS TO BE USED BY EACH SUCH ELIGIBLE HOLDER  
SOLELY IN CONNECTION WITH ITS EVALUATION OF THE COMBINED  
PLAN AND DISCLOSURE STATEMENT; USE OF THE COMBINED PLAN  
AND DISCLOSURE STATEMENT FOR ANY OTHER PURPOSE IS NOT  
AUTHORIZED. NOTHING STATED IN THE COMBINED PLAN AND  
DISCLOSURE STATEMENT SHALL BE DEEMED OR CONSTRUED AS AN  
ADMISSION OF ANY FACT OR LIABILITY BY ANY PARTY, OR BE  
ADMISSIBLE IN ANY PROCEEDING INVOLVING THE DEBTOR, THE

1 **COMMITTEE OR ANY OTHER PARTY. THE COMBINED PLAN AND**  
2 **DISCLOSURE STATEMENT MAY NOT BE REPRODUCED OR PROVIDED**  
3 **TO ANYONE OTHER THAN ADVISORS TO THE RECIPIENT WITHOUT**  
4 **THE PRIOR WRITTEN CONSENT OF THE DEBTOR.**

5 **SECTION 1.**  
6 **INTRODUCTION**

7 Borrego Community Health Foundation, (the “Debtor”), the debtor and debtor-  
8 in-possession in the above-captioned chapter 11 case, and the Official Committee of  
9 Unsecured Creditors (the “Committee”) hereby jointly propose the following  
10 combined disclosure statement and plan pursuant to §§ 1121(a) and 1125(b) (the  
11 disclosure statement portion hereof, the “Disclosure Statement” and the chapter 11  
12 plan portion hereof, the “Plan,” as may be modified and/or amended from time to  
13 time, and collectively, the “Combined Plan and Disclosure Statement”). Capitalized  
14 terms used in the Combined Plan and Disclosure Statement and not otherwise defined  
15 have the meanings ascribed to such terms in Section 3.

16 The Plan proposes to pay or otherwise satisfy Allowed Administrative Claims,  
17 Allowed Secured Claims, Allowed General Unsecured Claims, and a portion of the  
18 Allowed DHCS Claim, in full on the Effective Date or as soon as practicably  
19 thereafter. The Plan creates Class A and Class B Liquidating Trust Interests and  
20 proposes to pay Allowed General Unsecured Claims and the Allowed DHCS Claim  
21 in accordance with the DHCS Settlement. The Plan also proposes the resolution of  
22 certain other Claims and the distribution of proceeds to Holders of Allowed Claims.  
23 Claims against the Debtor—other than Unclassified Claims—are classified in Section  
24 9 and treated in accordance with Section 10 hereof. The Plan provides that (i) the  
25 Liquidating Trustee will administer the Class B Liquidating Trust Assets and continue  
26 the wind-down and liquidation of the Debtor after the Effective Date, and (ii) the Co-  
27 Liquidating Trustee will administer the Class A Liquidating Trust Assets to pay  
28 Holders of Allowed General Unsecured Claims.

29 The Debtor and the Committee will distribute the Combined Plan and  
30 Disclosure Statement to all holders of Claims in accordance with § 1125(b);  
31 Bankruptcy Rules 2002, 3016, and 3017; and the Bankruptcy Court’s order  
32 conditionally approving the Combined Plan and Disclosure Statement [Docket No. \_]  
33 (the “Conditional Approval and Procedures Order”).

34 The Combined Plan and Disclosure Statement and the exhibit hereto include a  
35 discussion of: (i) the nature and history of the Debtor’s business and liabilities; (ii)  
36 events during the Chapter 11 Case; (iii) the requirements for confirmation of the Plan  
37 and procedures for voting to accept or reject the Plan; (iv) additional factors and  
38

1 disclosures to be considered, including risk factors and certain U.S. federal income  
2 tax consequences of the Plan; and (v) the terms of the Plan, including the treatment  
3 of holders of Claims under the Plan. The Disclosure Statement was prepared with the  
4 intent to provide “adequate information” (as defined in the Bankruptcy Code) to  
5 enable holders of Claims against the Debtor to make informed judgments about the  
6 Plan.

7 Subject to the restrictions on modifications set forth in § 1127 and Bankruptcy  
8 Rule 3019 and those restrictions on modifications set forth in Section 20.4 of the  
9 Combined Plan and Disclosure Statement, the Debtor and the Committee expressly  
10 reserve the right to alter, amend, or modify the Combined Plan and Disclosure  
11 Statement, including the Plan Supplement, one or more times, before substantial  
12 consummation thereof.

13 Please read the Combined Plan and Disclosure Statement, the exhibit, other  
14 supporting materials, and any appropriate ballot carefully and follow the instructions  
15 set forth below and on the appropriate ballot to vote on the Combined Plan and  
16 Disclosure Statement. The Debtor and the Committee believe that the Combined Plan  
17 and Disclosure Statement provides the best method of maximizing the recoveries for  
18 the holders of Claims against the Debtor. **Therefore, the Debtor and the Committee**  
19 **recommend that all creditors who are entitled to vote should vote in favor of the**  
20 **Combined Plan and Disclosure Statement.**

21 Unless otherwise specified, all section or exhibit references in the Combined  
22 Plan and Disclosure Statement are to the respective section in, or exhibit to, the  
23 Combined Plan and Disclosure Statement, as the same may be amended, waived, or  
24 modified from time to time. The words “herein,” “hereof,” “hereto,” “hereunder,” and  
25 other words of similar import refer to the Combined Plan and Disclosure Statement  
26 as a whole and not to any particular section, subsection, or clause contained herein.  
27 The headings in the Combined Plan and Disclosure Statement are for convenience of  
28 reference only and shall not limit or otherwise affect the provisions hereof. For  
purposes herein: (a) in the appropriate context, each term, whether stated in the  
singular or the plural, shall include both the singular and the plural, and pronouns  
stated in the masculine, feminine, or neuter gender shall include the masculine,  
feminine, and the neuter gender; (b) any reference herein to a contract, lease,  
instrument, release, or other agreement or document being in a particular form or on  
particular terms and conditions means that the referenced document shall be  
substantially in that form or substantially on those terms and conditions; and (c) unless  
otherwise noted above, the rules of construction set forth in § 102 shall apply.

**SECTION 2.**  
**SUMMARY OF CLASSIFICATION OF CLAIMS**  
**UNDER PLAN AND IMPORTANT SOLICITATION AND**  
**CONFIRMATION DATES AND DEADLINES**

**2.1 *Summary of Classification of Claims.***

The following table designates the Classes of Claims against the Debtor and specifies which of those Classes are (a) not Impaired by the Plan, (b) Impaired by the Plan, and (c) entitled to vote to accept or reject the Plan in accordance with § 1126. In accordance with § 1123(a)(1), Administrative Claims, Professional Claims, Statutory Fees, and Priority Tax Claims, have not been classified. All of the potential Classes for the Debtor are set forth herein. If, ultimately, the Debtor does not have Holders of Claims in a particular Class or Classes, such Classes shall be treated as set forth in Section 10.

| <b>Class</b> | <b>Designation</b>       | <b>Impairment</b> | <b>Entitled to Vote</b> |
|--------------|--------------------------|-------------------|-------------------------|
| 1            | Priority Non-Tax Claims  | Not Impaired      | No (deemed to accept)   |
| 2            | Secured Claims           | Not Impaired      | No (deemed to accept)   |
| 3            | General Unsecured Claims | Impaired          | Yes                     |
| 4            | Allowed DHCS Claim       | Impaired          | Yes                     |

**2.2 *Important Dates and Deadlines.***

| <b>Event</b>   | <b>Proposed Date</b>                        |
|--|---|
| Voting Record Date   | November 28, 2023                           |
| Solicitation commences   | December 11, 2023                           |
| Deadline to file Plan Supplement   | December 11, 2023                           |
| Voting Objection Deadline  | December 22, 2023                           |
| Deadline for Creditors to file Rule 3018 Motions                         | December 29, 2023                           |
| Deadline to respond to Voting Objection                                  | December 29, 2023                           |
| Deadline for Debtor to respond to Rule 3018 Motions                      | January 5, 2024                             |
| Voting Deadline and deadline to submit the Release Opt-Out Election Form | January 8, 2024, at 4:00 p.m., Pacific Time |



| Event  | Proposed Date                               |
|--|---|
| Combined Plan and Disclosure Statement Objection Deadline  | January 8, 2024, at 4:00 p.m., Pacific Time |
| Deadline to file Confirmation Brief and other evidence supporting the Combined Plan and Disclosure Statement | January 11, 2024                            |
| Deadline to file Voting Tabulation Affidavit   | January 11, 2024                            |
| Confirmation Hearing   | January 17, 2024, at 10:00 a.m.             |

### **SECTION 3.** **DEFINITIONS AND INTERPRETATION**

#### **A. Definitions.**

As used in the Combined Plan and Disclosure Statement, capitalized terms not otherwise defined have the meanings set forth below. Any term that is not otherwise defined herein, but that is used in the Bankruptcy Code or the Bankruptcy Rules, shall have the meaning given to that term in the Bankruptcy Code or the Bankruptcy Rules, as applicable.

3.1 ***Administrative Claim*** means a Request for Payment of an administrative expense of a kind specified in § 503(b) and entitled to priority pursuant to § 507(a)(2) or § 507(b), including: (i) the actual, necessary costs and expenses, incurred on or after the Petition Date, of preserving the Estate and operating the business of the Debtor through the Effective Date; (ii) the value of goods received by the Debtor within 20 days before the Petition Date in which the goods have been sold to the Debtor in the ordinary course of the Debtor's business pursuant to § 503(b)(9); (iii) Allowed Claims that are entitled to be treated as Administrative Claims pursuant to a Final Order of the Bankruptcy Court; (iv) Professional Claims; (v) and Statutory Fees.

3.2 ***Administrative Claims Bar Date*** means the deadline set by an order of the Bankruptcy Court by which Holders of Administrative Claims, other than Administrative Claims arising in the ordinary course of business for the Debtor or Professional Claims, must assert Administrative Claims or be forever barred, which shall be (a) thirty days after the Effective Date for Administrative Claims other than Professional Claims, and (b) 45 days after the Effective Date for Professional Claims.

3.3 ***Administrative Claims Objection Bar Date*** means the deadline for filing objections to requests for Administrative Claims required to be filed, which shall be

1 90 days following the Effective Date, *provided, however*, that the Administrative  
2 Claims Objection Bar Date may be extended by the Bankruptcy Court.

3 3.4 ***Administrative Claims Reserve*** means Cash to be set aside by the Debtor  
4 on the Effective Date in an aggregate amount estimated to fund the required amounts  
5 for payment of all unpaid Allowed Administrative Claims that will be paid after the  
6 Effective Date and all Administrative Claims that are not yet Allowed as of the  
7 Effective Date.

8 3.5 ***Adversary Proceeding*** shall have the meaning provided below in Section  
9 5.5.

10 3.6 ***Allowed*** means for Distribution purposes, a Claim, or any portion  
11 thereof, or a particular Class of Claims: (a) that is Allowed by a Final Order of the  
12 Bankruptcy Court (or such other court as provided by the Plan or as the Liquidating  
13 Trustee or Co-Liquidating Trustee, as applicable, and the Holder of such Claim agree  
14 may adjudicate such Claim and objections thereto); (b) that is Allowed by this Plan  
15 and/or Confirmation Order; (c) is scheduled as not contingent, not unliquidated, and  
16 not disputed, and for which no superseding Proof of Claim has been timely filed; (d)  
17 for which a Proof of Claim in a liquidated amount has been timely filed with the  
18 Bankruptcy Court pursuant to the Bankruptcy Code or deemed timely filed by any  
19 Final Order of the Bankruptcy Court or other applicable bankruptcy law, and as to  
20 which (i) no objection to its allowance has been filed prior to the date of entry of the  
21 Confirmation Order or is not listed on the Disputed Claims Schedule; or (ii) any filed  
22 objection to its allowance has been settled or withdrawn, or has been denied by a Final  
23 Order of the Bankruptcy Court; (e) following the Effective Date, with respect to  
24 General Unsecured Claims, as otherwise may be determined as Allowed by the  
25 Liquidating Trust in accordance with the Plan and the Liquidating Trust Agreement;  
26 or (f) that is expressly allowed in a liquidated amount pursuant to this Plan.

27 3.7 ***Allowed DHCS Balance Claim*** means the Allowed DHCS Claim after:  
28 (i) the application of the DHCS Allowed Offset Amount, which amounts have been  
withheld by DHCS; and (ii) the payment of the DHCS Sales Proceeds Recovery. As  
set forth herein, the Allowed DHCS Balance Claim shall be subordinated to the prior  
payment in full of: (a) Allowed Administrative Claims; (b) Allowed Priority Claims;  
(c) Allowed General Unsecured Claims; and (d) the Effective Date Professional Claim  
Reserves.

3.8 ***Allowed DHCS Claim*** means the Allowed General Unsecured Claim of  
DHCS in the total amount of \$112,000,000, as accounted for and adjusted as set forth  
in the DHCS Settlement Agreement.

1           3.9 ***Appeal*** shall have the meaning provided below in Section 5.5.

2           3.10 ***Assets*** means all legal or equitable interests of the Estate in any and all  
3 (a) property of every kind, nature, character and description, whether real, personal,  
4 or mixed, whether tangible or intangible (including contract rights), wherever situated  
5 and by whomever possessed, and any goodwill related thereto, including any real  
6 estate, buildings, structures, improvements, privileges, rights, easements, leases,  
7 subleases, goods, materials, supplies, furniture, fixtures, equipment, work in process,  
8 accounts, chattel paper, cash, deposit accounts, reserves, deposits, contractual rights,  
9 intellectual property rights, claims, Causes of Action, securities, investments and any  
other general intangibles, and (b) the proceeds, products, offspring, rents or profits  
thereof, including all assets of the Debtor constituting “property of the estate” as  
described in § 541.

10           3.11 ***Asset Purchase Agreement*** means the agreement between the Debtor  
11 and DAP Health setting forth the terms of the DAP Sale, pursuant to § 363, and  
12 approved by the Sale Order.

13           3.12 ***Avoidance Actions*** means any Causes of Action arising under any  
14 section of chapter 5 of the Bankruptcy Code, including, without limitation, §§ 502,  
15 510, 541, 542, 543, 544, 545, 547, 548, 549, 550, 551, and 553 or under similar or  
related state or federal statutes and common law, including state fraudulent transfer  
laws.

16           3.13 ***Ballots*** means the ballots upon which the Holders of Impaired Claims  
17 shall indicate their acceptance or rejection of the Plan, in accordance with the Plan  
and the Voting Instructions.

18           3.14 ***Ballot Deadline*** means the date by which all Ballots must be properly  
19 executed, completed and delivered by First Class Mail, overnight courier, or hand  
20 delivery, to Kurtzman Carson Consultants LLC, at 222 N. Pacific Coast Highway, 3rd  
21 Floor, El Segundo, CA 90245, so as to be actually received by Kurtzman Carson  
22 Consultants LLC no later than 4:00 p.m. (Pacific Time), on the date set by the  
Bankruptcy Court in the Conditional Approval and Procedures Order.

23           3.15 ***Bankruptcy Code*** means title 11 of the United States Code, 11 U.S.C.  
24 §§ 101, *et seq.*, as amended.

25           3.16 ***Bankruptcy Court*** means the United States Bankruptcy Court for the  
26 Southern District of California, or any other court having jurisdiction over the Chapter  
27 11 Case, including, to the extent the jurisdictional reference of the Bankruptcy Court  
28 has been withdrawn to the United States District Court for the Southern District of  
California, pursuant to section 157(d) of title 28 of the United States Code.



1        3.17 **Bankruptcy Rules** means the Federal Rules of Bankruptcy Procedure as  
2 promulgated by the United States Supreme Court under section 2075 of title 28 of the  
3 United States Code, as may be amended from time to time.

4        3.18 **Bar Date** means the applicable deadlines by which a Proof of Claim or  
5 Request for Payment must be, or must have been, filed in in this Chapter 11 Case, as  
6 established by either the Bar Date Order, an order of the Bankruptcy Court or this  
7 Plan, including without limitation: (a) November 21, 2022 deadline to file Proofs of  
8 Claim relating to prepetition Claims; (b) the March 13, 2023 deadline to file Proofs  
9 of Claim for Governmental Units; (c) the Administrative Claims Bar Date; (d) the  
10 Extended DHCS Bar Date; and (e) the Rejection Bar Date.

11        3.19 **Bar Date Order** means any order of the Bankruptcy Court establishing  
12 Bar Dates for filing Proofs of Claim or Requests for Payment in this Chapter 11 Case,  
13 as the same may be amended, modified or supplemented including, but not limited to,  
14 the order at Docket No. 16.

15        3.20 **Business Day** means any day other than a Saturday, a Sunday, or any  
16 other day on which banking institutions in the State of California are required or  
17 authorized to close by law or executive order.

18        3.21 **Cash** means the legal tender of the United States of America and its  
19 equivalent.

20        3.22 **Causes of Action** means any and all present or future claims, rights,  
21 interests, legal and equitable defenses, offsets, recoupments, actions in law or equity  
22 or otherwise, choses in action, obligation, guaranty, controversy, demand, action  
23 suits, damages, judgments, third-party claims, counter-claims, cross-claims against  
24 any Person, whether known or unknown, liquidated or unliquidated, foreseen or  
25 unforeseen, existing or hereafter arising, whether based on legal or equitable relief,  
26 whether arising under the Bankruptcy Code or federal, state, common, or other law or  
27 equity, whether or not the subject of a pending litigation or proceedings on the  
28 Effective Date or thereafter of the Estate, the Debtor, or the Liquidating Trust, as  
applicable, including without limitation: (a) all Avoidance Actions; (b) all other  
claims in avoidance, recovery, and/or subordination; (c) all claims for the turnover of  
property to the Debtor or the Liquidating Trust; (d) all claims for compensation for  
damages incurred by the Debtor; (e) all claims arising in connection with *Husam E.*  
*Aldairi, et al. v. Borrego Community Health Foundation*, Case No. 37-2021-  
00046200-CU-BC-CTL (Cal. Sup. Ct. San Diego); (f) all claims in *Borrego*  
*Community Health Foundation v. Inland Valley, LLC, et al.*, Case No. 3:21-cv-01417-  
AJB-AGS (S.D. Cal.); (g) all claims in *Borrego Community Health Foundation v.*  
*Karen Hebets, et al.*, Case No. 3:22-cv-01056-AJB-AGS (S.D. Cal.); (h) all claims in

1 *Borrego Community Health Foundation v. Travelers Casualty and Surety Company*  
2 *of America*, Case No. 3:22-CV-161-L-MDD (S.D. Cal.); and (i) all other actions  
3 described in this Combined Plan and Disclosure Statement, the Confirmation Order,  
the Schedules, or the Plan.

4 3.23 **Chapter 11 Case** means the voluntary chapter 11 case filed by the Debtor  
5 on the Petition Date under the caption, *In re Borrego Community Health Foundation*,  
6 Case No. 22-02384, currently pending before the Bankruptcy Court.

7 3.24 **CHOW** means the change of ownership application submitted pursuant  
8 to 42 C.F.R § 489.18 by the Debtor and DAP Health for approval by CMS that will  
9 result in the transfer of the Debtor's Medicare Identification Number and Medicare  
Provider Agreement to DAP Health.

10 3.25 **CHOW Effective Date** means date of the approval of the CHOW by  
11 CMS.

12 3.26 **Claim** has the meaning set forth in § 101(5).

13 3.27 **Claims and Balloting Agent** means Kurtzman Carson Consultants LLC,  
14 which was appointed as the Debtor's claims, noticing, and balloting agent.

15 3.28 **Claims Objection Deadline** means the first Business Day that is the later  
16 of (a) two hundred ten (210) days after the Effective Date, or (b) such other later date  
17 as the Bankruptcy Court may establish upon a motion by the Liquidating Trustee in  
accordance with the Plan.

18 3.29 **Claimant** means the Holder of a Claim.

19 3.30 **Class** means a class of Claims established pursuant to Section 9 herein.

20 3.31 **Class A Liquidating Trust Assets** means, collectively: (i) the Remaining  
21 Cash; and (ii) (a) 67% of the first \$1 million of Net Recovery, (b) 33% of the second  
22 \$1 million of Net Recovery, and (c) for any Net Recovery thereafter, the Pro Rata  
23 share of such Net Recovery among the Holders of Class A Trust Beneficial Interests  
and Class B Trust Beneficial Interests.

24 3.32 **Class A Trust Beneficial Interests** means the interests in the Liquidating  
25 Trust of the Holders of Allowed Claims in Class 3 and their concomitant entitlement  
26 to Distributions to be made by the Liquidating Trust on account of Allowed General  
Unsecured Claims from the Class A Liquidating Trust Assets.

1        3.33 ***Class B Liquidating Trust Assets*** means collectively: (i) the DHCS  
2 Sales Proceeds Recovery; (ii) (a) 33% of the first \$1 million of Specified Litigation  
3 Recoveries, (b) 67% of the second \$1 million of Specified Litigation Recoveries, and  
4 (c) for any Specified Litigation Recoveries thereafter, the Pro Rata share of such  
5 Specified Litigation Recoveries among the Holders of Class A Trust Beneficial  
6 Interests and Class B Trust Beneficial Interests; and (iii) solely to the extent any Class  
A Liquidating Trust Assets remain after Holders of Class A Trust Beneficial Interests  
are paid in full, the Class A Liquidating Trust Assets.

7        3.34 ***Class B Trust Beneficial Interests*** means the interest in the Liquidating  
8 Trust of the Holders of Allowed Claims in Class 4 and their concomitant entitlement  
9 to Distributions to be made by the Liquidating Trust on account of the Allowed DHCS  
Balance Claim from the Class B Liquidating Trust Assets.

10       3.35 ***Closing*** means the consummation of the transactions contemplated by  
11 the DAP Sale pursuant to the terms of the Asset Purchase Agreement.

12       3.36 ***Closing Date*** means July 31, 2023, pursuant to the Asset Purchase  
13 Agreement, as set forth in the *Notice of Occurrence of Closing of Sale to DAP Health,*  
14 *Inc.* [Docket No. 823].

15       3.37 ***CMS*** means the Centers for Medicare and Medicaid Services.

16       3.38 ***Committee*** means the Official Committee of Unsecured Creditors  
17 appointed on September 26, 2022, by the U.S. Trustee in this Chapter 11 Case  
pursuant to § 1102 [Docket No. 49].

18       3.39 ***Conditional Approval and Procedures Order*** means the order entered  
19 by this Court (i) conditionally approving the disclosures set forth in the Combined  
20 Plan and Disclosure Statement, and (ii) approving the solicitation procedures set forth  
21 in the Combined Plan and Disclosure Statement on December [ ], 2023 [Docket No.  
\_].

22       3.40 ***Confirmation*** means the entry of the Confirmation Order, subject to all  
23 conditions specified in Section 18.1 hereof having been satisfied.

24       3.41 ***Confirmation Date*** means the date on which the Clerk of the Bankruptcy  
25 Court enters the Confirmation Order on the docket.

26       3.42 ***Confirmation Hearing*** means the hearing to be held by the Bankruptcy  
27 Court to consider Confirmation of the Plan, as such hearing may be adjourned or  
28 continued from time to time.

1        3.43 **Confirmation Order** means the order of the Bankruptcy Court  
2 confirming this Plan pursuant to § 1129.

3        3.44 **Co-Liquidating Trustee** means such person selected pursuant to Section  
4 15 of the Plan or any successor or replacement officer appointed under the terms of  
the Plan and Liquidating Trust Agreement.

5        3.45 **DAP Health** means Desert Aids Project d/b/a DAP Health.

6        3.46 **DAP Sale** means the sale of substantially all of the Debtor's assets to  
7 DAP Health pursuant to § 363.

8        3.47 **Debtor** means Borrego Community Health Foundation, in its capacity as  
9 debtor and debtor in possession in this Chapter 11 Case.

10       3.48 **DHCS** means the California Department of Health Care Service.

11       3.49 **DHCS 9019 Order** means the Order granting the Debtor's Motion to  
12 Approve Compromise Among Debtor, Official Committee of Unsecured Creditors,  
13 and California Department of Health Care Services [Docket No. 544] and approving  
the DHCS Settlement Agreement.

14       3.50 **DHCS Allowed Offset Amount** means the approximately \$20,600,000  
15 that DHCS is withholding from the Debtor, which amount is inclusive of  
16 approximately \$6,200,000 in monies otherwise payable to the Debtor for the  
17 provision of in-house dental services to Medi-Cal beneficiaries, consistent with the  
definition in the DHCS Settlement Agreement.

18       3.51 **DHCS Findings of Fact** shall have the meaning provided below in  
19 Section 5.5.

20       3.52 **DHCS Order** shall have the meaning provided below in Section 5.5.

21       3.53 **DHCS Sales Proceeds Recovery** means the 40% of the Net Cash  
22 Proceeds of the DAP Sale received by DHCS on or around the Effective Date of this  
23 Plan, consistent with the definition in the DHCS Settlement Agreement.

24       3.54 **DHCS Settlement Agreement** means the settlement agreement by and  
25 between the Debtor, the Committee, and DHCS that resolved all disputes between the  
Debtor, the Committee, and DHCS, approved by the DHCS 9019 Order.

26       3.55 **DHHS** means the United States Department of Health and Human  
27 Services.

1       3.56 **Disbursing Agent** means the individual or individuals as may be retained  
2 by the Liquidating Trustee or Co-Liquidating Trustee, as applicable, to assist him or  
3 her distribute the Liquidating Trust Assets in accordance with this Plan and the  
Liquidating Trust Agreement.

4       3.57 **Dispute Resolution** shall have the meaning set forth below in Section  
5 13.4.

6       3.58 **Disputed Claim** means a Claim that is either: (i) as of the date of entry  
7 of the Confirmation Order, the subject of a pending objection; or (ii) listed on a  
8 schedule included with the Plan Supplement (the “Disputed Claims Schedule”).

9       3.59 **Disputed Claim Reserve** shall have the meaning set forth below in  
10 Section 12.7.

11       3.60 **Distribution Date** means the Initial Distribution Date or any Subsequent  
12 Distribution Date, as applicable.

13       3.61 **Distributions** means the distributions of Cash to be made in accordance  
14 with the Plan and the Liquidating Trust Agreement.

15       3.62 **Distribution Record Date** means the close of business on the Business  
16 Day immediately preceding the Effective Date.

17       3.63 **District Court** means the United States District Court for the Southern  
18 District of California.

19       3.64 **Effective Date** means a day, as determined by the Plan Proponents, that  
20 is a Business Day as soon as reasonably practicable after all conditions to the Effective  
21 Date specified in Section 18.2 hereof have been satisfied or waived.

22       3.65 **Effective Date Professional Claim Reserves** means cash to be set aside  
23 by the Liquidating Trustee on the Effective Date sufficient in the aggregate to fund a  
24 reserve on account of accrued and unpaid Professional Claims not yet fixed and  
25 allowed by the Bankruptcy Court prior to or on the Effective Date.

26       3.66 **Entity** means an entity as defined in § 101(15).

27       3.67 **Estate** means the estate created upon the Petition Date pursuant to § 541.

28       3.68 **Exculpated Party** means, individually and collectively: (a) the Debtor;  
(b) the Debtor’s trustees, officers, and managers serving in such capacity on and after  
the Petition Date; (c) members of the Committee (solely in their capacities as  
Committee members); and (d) Bankruptcy Court-approved Estate and Committee



professionals. Notwithstanding the foregoing, none of the Prepetition Fraud Parties are an Exculpated Party.

3.69 **Excluded Party** means all enumerated defendants in the Causes of Action and the Prepetition Fraud Parties, as set forth in the Plan Supplement.

3.70 **Executory Agreement** means any executory contract or unexpired lease subject to § 365, excluding any executory contract or unexpired lease entered into after the Petition Date and approved by an order of the Bankruptcy Court.

3.71 **Extended DHCS Bar Date** means December 29, 2023, which is the deadline by which DHCS must file a Proof of Claim for any further General Unsecured Claims against the Debtor for Medi-Cal overpayments, consistent with the definition in the DHCS Settlement Agreement.

3.72 **Final Decree** means the decree contemplated under Bankruptcy Rule 3022.

3.73 **Final Distribution** means the last payment to Holders of Allowed Claims in accordance with the provisions of the Plan.

3.74 **Final Order** means an order or judgment, the operation or effect of which has not been reversed, stayed, modified, or amended, is in full force and effect, and as to which order or judgment (or any reversal, stay, modification, or amendment thereof) (a) the time to appeal, seek *certiorari*, or request reargument, further review, or rehearing has expired and no appeal, petition for *certiorari*, request for reargument or further review, or rehearing has been timely filed, or (b) any appeal that has been or may be taken, or any petition for *certiorari* or request for reargument or further review or rehearing that has been or may be filed, has been resolved by the highest court to which the order or judgment was appealed, from which *certiorari* was sought, or to which the request was made, and no further appeal, petition for *certiorari*, request for reargument, or further review or rehearing has been or can be taken or granted; provided, however, that the possibility that a motion under Rule 60 of the Federal Rules of Civil Procedure, or any analogous rule under the Bankruptcy Rules, may be filed relating to such order shall not prevent such order from being a Final Order; provided, further, that the Debtor or Liquidating Trustee, as applicable, reserve the right to waive any appeal period for an order or judgment to become a Final Order.

3.75 **General Unsecured Claim** means any Claim against the Debtor that is not a/an: (i) Administrative Claim; (ii) Professional Claim; (iii) Secured Claim; (iv) Priority Claim; (v) Allowed DHCS Claim; (vi) Allowed DHCS Balance Claim; or (vii) Statutory Fee.

1           3.76 **Governmental Unit** has the definition set forth in § 101(27).

2           3.77 **Holder** means a holder of a Claim against the Debtor.

3           3.78 **Impaired** means, with respect to a Class of Claims, that such Class is  
4 “impaired” within the meaning of § 1124.

5           3.79 **Indemnified Parties** shall have the meaning set forth below in Section  
6 17.6.

7           3.80 **Initial Distribution Date** means the Effective Date, or as soon as  
8 practicable thereafter when the initial Distribution of Cash shall be made to the  
9 Holders of Allowed Claims, as determined by the Debtor, the Liquidating Trustee, or  
the Co-Liquidating Trustee, as applicable.

10           3.81 **Insurance Policy** means any insurance policy maintained by or for the  
11 benefit of the Debtor, regardless of whether such Insurance Policy is set forth in a  
12 schedule to the Plan Supplement.

13           3.82 **Liquidating Trust** means the liquidating trust created pursuant to the  
14 Liquidating Trust Agreement.

15           3.83 **Liquidating Trust Agreement** means the *Liquidating Trust Agreement*,  
16 to be dated on or prior to the Effective Date, as may be modified from time to time,  
between the Debtor and the Liquidating Trustee.

17           3.84 **Liquidating Trust Assets** means all assets of the Debtor that (i) exist  
18 immediately prior to the Effective Date and are not otherwise used by the Debtor to  
19 make Distributions or create Reserves on the Effective Date to or for the benefit of  
20 Holders of Allowed Administrative Claims, Priority Non-Tax Claims, Professional  
21 Claims and Secured Claims, and (ii) are not Purchased Assets. The Liquidating Trust  
22 Assets also include, without limitation, to the extent not otherwise expressly excluded  
23 by this definition: (i) the Remaining Cash; (ii) all Causes of Action the Debtor holds  
24 or may hold against any Person or Entity as of the Effective Date (except to the extent  
25 they are the subject of any of the Releases set forth in the Plan); (iii) all Claims and  
26 rights of the Debtor under any Insurance Policies; (iv) any and all other non-Cash  
assets, interests, rights, claims and defenses of the Debtor or the Estate, including,  
without limitation, all rights under any order of the Bankruptcy Court; (v) any and all  
tax refunds to which the Debtor may be entitled; and (vi) any and all proceeds of any  
of the foregoing.

27           3.85 **Liquidating Trust Beneficiaries** means the Holders of Trust Beneficial  
28 Interests, as of any point in time.

1       3.86 **Liquidating Trustee** means such person selected pursuant to Section 15  
2 of the Plan or any successor or replacement officer appointed under the terms of the  
3 Plan and Liquidating Trust Agreement.

4       3.87 **Litigation** means the interest of the Estate, the Debtor, or the Liquidating  
5 Trust, as applicable, in any and all claims, rights, and Causes of Action that have been  
6 or may be commenced by the Debtor or the Liquidating Trust, as applicable, except  
7 to the extent concerning any Released Parties. Litigation includes, without limitation  
8 not otherwise stated herein, any action: (i) to avoid and recover any transfers of  
9 property determined to be preferential, fraudulent, or avoidable pursuant to §§ 544,  
10 545, 547, 548, 549(a), and 550; (ii) for the turnover of property to the Debtor or  
11 Liquidating Trust, as applicable; (iii) for the recovery of property or payment of  
12 money that belongs to or can be asserted by the Debtor or the Liquidating Trust, as  
13 applicable; (iv) for compensation for damages incurred by the Debtor; and (v)  
14 equitable subordination actions against Creditors.

15       3.88 **Litigation Recoveries** means any Cash or other property received by the  
16 Debtor or the Liquidating Trust, as applicable, from all or any portion of the Litigation  
17 of any of the Causes of Action, including, but not limited to, awards of damages,  
18 attorneys' fees and expenses, interest, and punitive damages, whether recovered by  
19 way of settlement, execution on judgment, or otherwise. If any litigation of any of the  
20 Causes of Action is pursued on a contingent-fee basis, the Litigation Recovery will  
21 be net of any expenses of such litigation and any contingent fee paid to legal counsel.

22       3.89 **Local Bankruptcy Rules** means the Local Rules of the United States  
23 Bankruptcy Court of the Southern District of California, as amended from time to  
24 time.

25       3.90 **Management Services Support Agreement** means the agreement  
26 between the Debtor and DAP Health for DAP Health to provide a broad range of  
27 management support services prior to the Closing Date as set forth in the Asset  
28 Purchase Agreement.

      3.91 **Medi-Cal** means the program administered by the State of California for  
medical assistance under title XIX of the Social Security Act.

      3.92 **Medicare** means the federal health insurance program administered by  
CMS under title XVIII of the Social Security Act.

      3.93 **Net Cash Proceeds** means the aggregate cash consideration paid to or  
retained by the Debtor at Closing of the DAP Sale net of the Sale Proceeds Holdback.



1       3.94 **Net Recovery** means the aggregate amount of any cash recovery from  
2 litigation of any of the Causes of Action realized by the Debtor or its successor-in-  
3 interest net of the fees (including attorney's fees) and expenses of such litigation.

4       3.95 **Nonprofit Laws** means any and all federal, state, local and other laws  
5 and governmental regulations applicable to nonprofit corporations, including without  
6 limitation, any administrative and judicial interpretations thereof (as applicable).

7       3.96 **Nonprofit Status** means status as a nonprofit corporation under  
8 applicable Nonprofit Laws.

9       3.97 **Ombudsman Parties** has the meaning set forth in Section 17.8 herein.

10       3.98 **Operate** (and any such variations, such as "**Operation**") means to  
11 operate, oversee, manage, administer, coordinate, control, supervise and/or direct the  
12 business and operations of any and/or all of the Purchased Assets, whether in the  
13 ordinary course of business or in accordance with the Asset Purchase Agreement,  
14 Transition Services Agreement, or otherwise, and including undertaking or pursuing  
15 strategies, activities, or actions with the intent of furthering the objectives of, and  
16 otherwise to effectuate the Plan as contemplated by the provisions hereof, including  
17 any strategies, activities or actions aimed at retaining, renewing, amending, extending  
18 or Transferring any of the Purchased Assets.

19       3.99 **Operating Account** means one or more deposit accounts of Cash  
20 established and/or maintained by the Liquidating Trustee as set forth in Section  
21 15.5(c).

22       3.100 **Ordinary Course Professionals Order** means the order [Docket No.  
23 400] entered by the Bankruptcy Court granting the Debtor's motion to retain and  
24 compensate professionals utilized by the Debtor in the ordinary course of business  
25 [Docket No. 271].

26       3.101 **Ordinary Course Professionals** means the professionals retained by the  
27 Debtor in the ordinary course of their business operations, pursuant to the Ordinary  
28 Course Professionals Order.

      3.102 **Patient Care Ombudsman** means Dr. Jacob Nathan Rubin, MD, FACC,  
appointed by the U.S. Trustee to serve as the patient care ombudsman in the Chapter  
11 Case, pursuant to § 333(a), in accordance with the order entered by the Bankruptcy  
Court on September 16, 2022 [Docket No. 25].

      3.103 **Person** means an individual, partnership, corporation, limited liability  
company, business trust, joint stock company, trust, unincorporated association, joint

1 venture, governmental authority, Governmental Unit or other entity of whatever  
2 nature.

3 3.104 **Petition Date** means September 12, 2022, which is the date that the  
4 Debtor filed a voluntary chapter 11 petition.

5 3.105 **Plan** means this plan of liquidation proposed by the Plan Proponents,  
6 including the Plan Supplement and the exhibit hereto and thereto, as the same may be  
7 amended, modified or supplemented from time to time in accordance with the  
provisions of the Bankruptcy Code and its terms.

8 3.106 **Plan Proponent** means each of the Debtor and the Committee.

9 3.107 **Plan Supplement** means a supplemental appendix to this Plan, as may  
10 be amended from time to time on or prior to the Effective Date, which will contain  
the following items:

- 11 a) the Schedule of Assumed Contracts;
- 12 b) the list of Retained Causes of Action;
- 13 c) the list of Excluded Parties;
- 14 d) the Disputed Claims Schedule;
- 15 e) the schedule of Insurance Policies;
- 16 f) the initial Wind-down Budget;
- 17 g) the identity of the directors serving on the Post-Effective
- 18 Date Board of Directors;
- 19 h) the identity of the initial Liquidating Trustee;
- 20 i) the identity of the initial Co-Liquidating Trustee;
- 21 j) the form of Liquidating Trust Agreement; and
- 22 k) the schedule of estimated costs of administration and any
- 23 other funds required to be distributed upon the Effective Date
- 24 as required by Local Rule 3020-1.
- 25
- 26
- 27
- 28

1 *provided that*, the Debtor shall file items (a) through (k) by December 11, 2023. The  
2 Debtor may file separately each of the foregoing documents. The Plan Supplement  
3 shall be in substance and form acceptable to each of the Plan Proponents.

4 3.108 ***Post-Effective Date Board of Directors*** means the three (3) member  
5 board of directors for the Debtor that will be formed prior to or on the Effective Date  
6 in accordance with Section 15.5(b) hereof. The initial members of the Post-Effective  
7 Date Board of Directors shall be: (i) Jenna LeComte-Hinley, PhD; (ii) Frank Figueroa;  
8 and (iii) Martha Deichler. All proposed members of the Post-Effective Date Board of  
9 Directors are members of the Debtor's existing Board of Directors.

10 3.109 ***Post-Effective Date Debtor*** means the Debtor, in existence as of the  
11 Effective Date, which shall exist solely for the limited duration and purposes set forth  
12 in the Plan.

13 3.110 ***Prepetition Fraud*** means the fraud discovered by the Debtor  
14 orchestrated by certain of the Debtor's prior management, landlords and contractors  
15 and community contract dentists that involved filing false claims for dental services  
16 provided by the contract dentists.

17 3.111 ***Prepetition Fraud Parties*** means the parties who are alleged to have  
18 participated in the Prepetition Fraud as set forth in the Plan Supplement.

19 3.112 ***Priority Claim*** means a Priority Non-Tax Claim or a Priority Tax Claim.

20 3.113 ***Priority Non-Tax Claim*** means any Claim entitled to priority in payment  
21 as specified in § 507(a)(4), (5), (6), (7) or (9) other than Administrative Claims and  
22 Priority Tax Claims.

23 3.114 ***Priority Tax Claims*** means Claims of any Governmental Unit entitled to  
24 priority under § 507(a)(8) and 507(c).

25 3.115 ***Professional*** means any Person (a) retained in the Chapter 11 Case by  
26 Final Order, pursuant to §§ 327, 363, and 1103 or otherwise; or (b) awarded  
27 compensation and reimbursement by the Bankruptcy Court, pursuant to § 503(b)(4).

28 3.116 ***Professional Claim*** means an Administrative Claim of a Professional for  
compensation for services rendered or reimbursement of costs, expenses, or other  
charges and disbursements incurred relating to services rendered or expenses incurred  
after the Petition Date and prior to and including the Effective Date.

3.117 ***Proof of Claim*** means a proof of claim filed in this Chapter 11 Case.

1       3.118 **Provider Agreements** means (i) the Medicare Health Insurance Benefits  
2 Agreements between the Debtor and DHHS, and (ii) the Medi-Cal Provider  
3 Agreements between the Debtor and DHCS.

4       3.119 **Purchased Assets** means collectively all of the Assets listed in Section  
5 1.7 of the Asset Purchase Agreement.

6       3.120 **Rejection Bar Date** means the last date for any Entity whose claims arise  
7 out of the Bankruptcy Court approved rejection of an executory contract or unexpired  
8 lease to file a Proof of Claim for damages related to such rejection. The Rejection Bar  
9 Date for such Claims will be, (i) with respect to executory contracts and unexpired  
10 leases rejected pursuant to a Bankruptcy Court order other than the Confirmation  
11 Order, the date provided by an order approving the rejection, and, (ii) with respect to  
12 executory contracts and unexpired leases rejected pursuant to the Confirmation Order,  
13 the date that is thirty (30) days after the Effective Date.

14       3.121 **Related Persons** means, subject to any exclusions expressly set forth in  
15 the Plan, with respect to a specific Person, said Person's successors and assigns, as  
16 applicable, its current and former shareholders, affiliates, subsidiaries, employees,  
17 agents, investment managers, subagents, officers, directors, managers, trustees,  
18 partners, members, professionals, representatives, advisors, attorneys, financial  
19 advisors, accountants, and consultants.

20       3.122 **Releases** shall have the meaning provided below in Section 17.2.

21       3.123 **Release Opt-Out Election Form** means a form for Holders of Claims to  
22 opt out of being a Releasing Party in connection with the Third Party Release set forth  
23 in Section 17 of the Plan.

24       3.124 **Released Party** means, individually and collectively: (a) the Debtor, (b)  
25 the Committee, (c) the following members of the Committee: McKesson Corporation;  
26 Greenway Health, LLC; We Klean Inc.; Mustafa Bilal, DDS, Inc.; Vista Village  
27 Family Dentistry; Vitamin D Public Relations, LLC; and Pourshirazi & Youssefi  
28 Dental Corporation; and (d) each of the Related Persons of each of the Entities in the  
foregoing clauses (a)-(c); provided, however, that notwithstanding anything to the  
contrary herein, including the definition of "Related Persons," none of the Prepetition  
Fraud Parties are a Released Party.

      3.125 **Releasing Party** means (a) the Released Parties; and (b) all Claimants  
that (i) vote to accept the Plan (or are deemed to accept the Plan), and (ii) do not  
affirmatively opt out of Third Party Releases pursuant to a duly executed Release Opt-  
Out Election Form; *provided, that*, notwithstanding anything contained herein to the

1 contrary, in no event shall an Entity be a Releasing Party that (x) does not vote to  
2 accept or reject the Plan, (y) votes to reject the Plan, or (z) appropriately marks the  
3 Release Opt-Out Election Form to opt out of the Third Party Releases and returns  
4 such Release Opt-Out Election Form in accordance with the Plan and the Voting  
Instructions.

5 3.126 **Remaining Cash** means the actual sum of Cash that constitutes  
6 Liquidating Trust Assets after: (i) the payment of Cash necessary to satisfy all  
7 Allowed Unclassified Claims that are Allowed on or prior to the Effective Date; (ii)  
8 the funding of reserves for disputed Unclassified Claims to the extent required by the  
9 Bankruptcy Court on or prior to the Effective Date; (iii) the payment of all Allowed  
10 Claims payable on the Effective Date as set forth in Classes 1-2; and (iv) the Transfer  
into or maintenance of funds in the Operating Accounts for the Post-Effective Date  
Debtor on the Effective Date in accordance with Section 15.5(c).

11 3.127 **Remaining Estate Funds** means the actual sum of Cash held by the  
12 Debtor on the Effective Date.

13 3.128 **Request for Payment** means a request for payment of an Administrative  
14 Claim filed in the Chapter 11 Case.

15 3.129 **Retained Causes of Action** shall have the meaning set forth below in  
16 Section 17.7(b).

17 3.130 **Sale Effective Time** means midnight (Pacific Coast Time) following the  
Closing Date of the DAP Sale.

18 3.131 **Sale Order** means the Final Order approving the DAP Sale, pursuant to  
19 § 363, titled Order (A) Authorizing the Sale of Property to Desert Aids Project d/b/a  
20 DAP Health Free and Clear of Liens, Claims, Encumbrances, and Other Interests; (B)  
21 Approving the Assumption and Assignment of an Unexpired Lease Related Thereto;  
and (C) Granting Related Relief [Docket No. 559].

22 3.132 **Sale Proceeds Holdback** means \$16,000,000, which amount is the  
23 Debtor's good faith estimate of the aggregate amount of Secured Claims, Priority  
24 Claims, and Administrative Claims, which amount may be adjusted only in a manner  
consistent with the DHCS Settlement Agreement.

25 3.133 **Schedule of Assumed Contracts** means the schedule listing the  
26 Executory Agreements to be assumed pursuant to the Plan.

27 3.134 **Scheduled** means, with respect to any Claim, the status, priority, and  
28 amount, if any, of such Claim as set forth in the Schedules.



1 3.135 **Schedules** means the schedules of assets and liabilities and the  
2 statements of financial affairs filed by the Debtor in the Chapter 11 Case pursuant to  
3 § 521 and Bankruptcy Rule 1007 [Docket Nos. 97, 98], which incorporate by  
4 reference the global notes and statement of limitations, methodology, and disclaimer  
5 regarding the Debtor's schedules and statements, as such schedules or statements have  
6 been or may be further modified, amended, or supplemented from time to time in  
7 accordance with Bankruptcy Rule 1009 or Final Orders of the Bankruptcy Court.

8 3.136 **Secured Claim** means a Claim that is (a) secured by a lien on any of the  
9 Assets, which lien is valid, perfected, and enforceable under applicable law or by  
10 reason of a Final Order, to the extent of the value of the claimant's interest in such  
11 Asset, or (b) entitled to setoff under § 553, to the extent of the amount subject to such  
12 setoff, as determined pursuant to § 506(a) or § 1129(b).

13 3.137 **Solicitation Package** shall have the meaning set forth below in Section  
14 6.10.

15 3.138 **Specified Litigation** means the following lawsuits: (i) Husam E. Aldairi,  
16 et al. v. Borrego Community Health Foundation, Case No. 37-2021-00046200-CU-  
17 BC-CTL (Cal. Sup. Ct. San Diego); (ii) Borrego Community Health Foundation v.  
18 Inland Valley, LLC, et al., Case No. 3:21-cv-01417-AJB-AGS (S.D. Cal.); (iii)  
19 Borrego Community Health Foundation v. Karen Hebets, et al., Case No. 3:22-cv-  
20 01056-AJB-AGS (S.D. Cal.); and (iv) Borrego Community Health Foundation v.  
21 Travelers Casualty and Surety Company of America, Case No. 3:22-CV-161-L-MDD  
22 (S.D. Cal.).

23 3.139 **Specified Litigation Defendant** means any counterparty to the Debtor in  
24 the Specified Litigation.

25 3.140 **Specified Litigation Recoveries** means the Net Recovery, if any, realized  
26 by the Debtor or the Liquidating Trust from any or all of the Specified Litigation.

27 3.141 **Statutory Fees** means the fees payable pursuant to section 1930 of title  
28 28 of the United States Code that were incurred in connection with the Chapter 11  
Case.

3.142 **Subsequent Distribution Date** means any date after the Initial  
Distribution Date upon which the Liquidating Trust makes a Distribution to any  
Holders of Allowed Claims, as determined by the Liquidating Trustee or Co-  
Liquidating Trustee, as applicable.

3.143 **Tax** means any tax, charge, fee, levy, impost, or other assessment by any  
federal, state, local, or foreign taxing authority, including, without limitation, income,

1 excise, property, sales, transfer, employment, payroll, franchise, profits, license, use,  
2 ad valorem, estimated, severance, stamp, occupation, and withholding tax.

3 3.144 **Third Party Releases** shall have the meaning provided below in Section  
4 17.2(b).

5 3.145 **Transition Period** means the time between the Sale Effective Time and  
6 the occurrence of both (i) the CHOW Effective Date, and (ii) the dissolution of the  
Post-Effective Date Debtor.

7 3.146 **Transition Services Agreement** means the agreement between the  
8 Debtor and DAP Health in which the parties (or their successors-in interest, including  
9 the Post-Effective Date Debtor) agree to provide certain services and support after the  
Closing of the Sale pending the approval of the CHOW by CMS.

10 3.147 **Transfer (and any variations such as "Transferring")** means to,  
11 directly or indirectly, sell, convey, assign, pledge, encumber, hypothecate, gift,  
12 contribute, subject to a joint venture, partnership, or similar arrangement, abandon,  
13 convey, or transfer or otherwise dispose of, either voluntarily or involuntarily, any  
14 Asset or enter into any contract for any Asset that will effectuate the foregoing  
whether or not the foregoing is subject to approvals or conditions.

15 3.148 **Trust Assets Accounts** means interest-bearing bank account(s) or  
16 money-market account(s) to be established and held in trust by the Liquidating  
17 Trustee or Co-Liquidating Trustee, as applicable, on or after the Effective Date, for  
18 the purpose of holding the Liquidating Trust Assets to be distributed pursuant to the  
Plan and any interest, dividends, or other income earned upon the investment of the  
Liquidating Trust Assets.

19 3.149 **Trust Beneficial Interests** mean, collectively, (i) Class A Trust  
20 Beneficial Interests, and (ii) the Class B Trust Beneficial Interests. The Trust  
21 Beneficial Interests shall be evidenced as set forth in Section 13.3 and shall not be  
22 transferable, except to the limited extent provided in the Liquidating Trust Agreement.

23 3.150 **Unclassified Claims** means, collectively, Administrative Claims,  
24 Professional Claims, Statutory Fees, and Priority Tax Claims.

25 3.151 **Unimpaired Claim** means a Claim that is not impaired because the Plan  
26 leaves unaltered the legal, equitable, and contractual rights to which such Claim  
entitles the Holder of such Claim, as set forth in § 1124(1).

27 3.152 **U.S. Trustee** means the Office of the United States Trustee for the  
28 Southern District of California.

1 3.153 *Vacatur Stipulation* shall have the meaning provided below in Section  
2 5.5.

3 3.154 *Voting Instructions* means the instructions for voting on the Plan  
4 contained on the Ballots.

5 3.155 *Wind-down Budget* means the budget (as the same may be amended or  
6 modified from time to time as provided in the Liquidating Trust Agreement) setting  
7 forth the projected costs and expenses associated with winding down the Debtor and  
8 the Estate and for the Liquidating Trustee and Co-Liquidating Trustee to discharge  
9 their duties under the Plan and the Liquidating Trust Agreement.

10 **B. Interpretation and Rules of Construction.**

11 Unless otherwise specified, all Section or exhibit references in the Combined  
12 Plan and Disclosure Statement are to the respective Section in, or exhibit to, the  
13 Combined Plan and Disclosure Statement, as the same may be amended, waived, or  
14 modified from time to time. The words “herein,” “hereof,” “hereto,” “hereunder,” and  
15 other words of similar import refer to the Combined Plan and Disclosure Statement  
16 as a whole and not to any particular Section, subsection, or clause contained therein.  
17 The headings in the Combined Plan and Disclosure Statement are for convenience of  
18 reference only and shall not limit or otherwise affect the provisions hereof. For  
19 purposes herein: (1) in the appropriate context, each term, whether stated in the  
20 singular or the plural, shall include both the singular and the plural, and pronouns  
21 stated in the masculine, feminine, or neuter gender shall include the masculine,  
22 feminine, and the neuter gender; (2) any reference herein to a contract, lease,  
instrument, release, indenture, or other agreement or document being in a particular  
form or on particular terms and conditions means that the referenced document shall  
be substantially in that form or substantially on those terms and conditions; (3) the  
rules of construction set forth in § 102 shall apply; and (4) any term used in capitalized  
form herein that is not otherwise defined, but that is used in the Bankruptcy Code or  
the Bankruptcy Rules, shall have the meaning assigned to that term in the Bankruptcy  
Code or the Bankruptcy Rules, as the case may be.

23 **C. Controlling Document.**

24 The Combined Plan and Disclosure Statement (without reference to the Plan  
25 Supplement) shall govern and control in the event of an inconsistency between the  
26 terms and provisions in the Combined Plan and Disclosure Statement (without  
27 reference to the Plan Supplement), the Plan Supplement, any other instrument or  
28 document created or executed pursuant to the Combined Plan and Disclosure  
Statement, or any order (other than the Confirmation Order) referenced in the



1 Combined Plan and Disclosure Statement (or any exhibit, schedules, appendices,  
2 supplements or amendments to any of the foregoing); provided that, notwithstanding  
3 anything herein to the contrary, the Confirmation Order shall govern and control in  
4 all respects in the event of a conflict between the Confirmation Order and any  
provision of the Combined Plan and Disclosure Statement or the Plan Supplement.

5 **SECTION 4.**  
6 **BACKGROUND**

7 **4.1 *Overview of the Debtor.***

8 The Debtor is a non-profit public charity, tax-exempt under section 501(c)(3)  
9 of the Internal Revenue Code. The Debtor strives to be the community leader in  
10 improving the health of the populations in its service area, many of whom struggle  
11 with job and housing insecurity or disabilities. Its primary focus is the underserved,  
12 with an empowered workforce providing measurable quality and compassionate care  
13 to its patients. On the Petition Date, the Debtor had 24 brick and mortar sites including  
14 administrative sites, 2 pharmacies, and 6 mobile units covering a service area  
15 consisting of a 250-mile corridor on the eastern side of San Diego and Riverside  
16 Counties, CA. During 2021, the Debtor provided approximately 386,000 patient care  
17 visits. As of 2021, of Debtor's patients: (a) 94% had incomes below 200% of the FPL;  
18 (b) 71% lived in poverty; (c) approximately 75% were Medi-Cal (Medicaid)  
19 recipients or participate in other public health programs; (d) 36% were under the age  
20 18; and (e) 93% were under the age of 65. The Debtor's services included  
comprehensive primary care, pediatric care, urgent care, behavioral health, dental  
services, specialty care, transgender health, women's health, prenatal care, veteran's  
health, chiropractic services, telehealth, and pharmacy. The Debtor was also an active  
partner in the training of medical residents, medical students, nurse practitioner  
students, physician assistant students, nursing students and other healthcare  
professionals.

21 As of the Petition Date, the Debtor operated as a federally qualified health  
22 center ("FQHC"). FQHCs are federally designated entities that receive federal grants  
23 and enhanced state payments to provide health care services to low-income and rural  
24 patients. The Debtor's health services were targeted to families with incomes below  
25 200% of the Federal Poverty Level. As an FQHC, the Debtor strived to deliver high  
26 quality, comprehensive, compassionate primary health care to people in the  
surrounding area, regardless of ability to pay.

27 The Debtor also operated as a Federal Tort Claims Act ("FTCA") "deemed  
28 facility." Under section 224 of the Public Health Service Act, as amended by the

1 Federally Supported Health Centers Assistance Acts of 1992 and 1995, employees of  
2 eligible health centers like the Debtor may be deemed as federal employees for the  
3 purposes of liability protections under the FTCA for acts or omissions in the  
4 performance of medical, surgical, dental, or related functions resulting in personal  
5 injury, including death, and occurring within the scope of employment. Congress  
6 extended eligibility for FTCA protections to health centers like the Debtor in order to  
7 increase the availability of funds for health centers to provide primary health care  
8 services by reducing or eliminating health centers' malpractice insurance premiums.

7 Further information concerning the Debtor's operations is available in the  
8 *Declaration of Isaac Lee, Chief Restructuring Officer, in Support of Debtor's*  
9 *Emergency First Day Motions* [Docket No. 7] (the "First-Day Declaration").

#### 10 4.2 *Events Leading to Chapter 11 Filing.*

11 In 2020, the Debtor's Board of Trustees (the "Board") became aware that  
12 members of the Debtor's leadership, certain landlords/contractors, and community  
13 dentists orchestrated what appears to be significant fraud for their own personal  
14 enrichment which involved filing false claims for dental services provided by contract  
15 dentists (*i.e.*, the Prepetition Fraud). In November 2020, DHCS issued a temporary  
16 suspension of payments for Medi-Cal services because of an ongoing fraud  
17 investigation into the outside, contract dental program. There were no accusations of  
18 any fraudulent acts associated with the in-house dental program or medical services.  
19 During the pendency of the suspension by DHCS, the Debtor provided thousands of  
20 services without compensation.

21 Following the participation in a formal administrative meet and confer process,  
22 on February 26, 2021, the Debtor entered into a settlement agreement with DHCS,  
23 pursuant to which DHCS agreed to lift the temporary suspension as it pertained to the  
24 reimbursement of Medi-Cal medical services. The temporary payment suspension  
25 remained in place through the Petition Date with respect to dental services.

26 The Debtor took strong corrective actions and fully cooperated with state and  
27 federal investigators. Among other steps taken by the Debtor in the fall of 2020, the  
28 Debtor (a) terminated individual executives and others suspected of involvement in  
the apparent fraud; (b) removed any tainted members from the Board; (c) hired new  
leadership and added new board members with a high level of integrity and  
experience; (d) agreed to the appointment of a monitor, and fully cooperated with that  
monitor; (e) diligently completed corrective action plans; (f) initiated lawsuits against  
the bad actors; (g) created a corporate compliance department and instituted a robust  
compliance program; and (h) engaged reputable legal, IT, accounting, and financial

1 consultants to guide it on its path to full responsibility and integrity.

2 The Debtor initiated an internal investigation to identify wrongdoing by former  
3 associates, which led to the filing of pending litigation against the former trustees,  
4 officers, and contract dentists. The schemes included selling useless assets to the  
5 Debtor at inflated prices, entering into one-sided agreements with the Debtor to its  
6 detriment, committing and/or covering up healthcare fraud through improper billing  
7 of dental services, entering into leases with the Debtor that were many times fair  
8 market rates and terms, paying themselves above-market salaries and benefits, and  
9 hiring friends and family members to work for the Debtor and paying them above-

10 While there were no accusations of any fraudulent acts associated with the in-  
11 house dental program, as set forth above, the Medi-Cal suspension on the Debtor's  
12 in-house dental payments resulted in DHCS withholding more than \$7 million  
13 otherwise payable to the Debtor.

14 The Debtor commenced this Chapter 11 Case as a result of the issues discussed  
15 in this Section IV with the objective to maintain the Debtor's business operations; to  
16 preserve value for the Debtor, its stakeholders, and parties in interest; and, most  
17 importantly, to protect the health and wellbeing of the patients who are being treated  
18 at the facilities operated by the Debtor and the employees of the Debtor.

## 19 **SECTION 5.**

### 20 **THE CHAPTER 11 CASE**

21 The following is a brief description of certain material events that have  
22 occurred during the Chapter 11 Case.

#### 23 **5.1 *Material First-Day Motions Filed on the Petition Date.***

##### 24 **a) Emergency Motion to Pay the Debtor's Prepetition Priority Wages**

25 The Debtor filed an emergency motion [Docket No. 3] (the "Wage Motion")  
26 for authority to pay the Debtor's prepetition priority wages and related benefits in the  
27 ordinary course of business to avoid the disruption to the Debtor's business from  
28 failing to do so. The Bankruptcy Court granted the Wage Motion. [See Docket No.  
20].

##### 29 **b) Emergency Motion to Maintain Cash Management Systems**

30 The Debtor filed an emergency motion [Docket No. 4] (the "Cash Management")

1 Motion”) for authority to maintain their cash management systems, which was  
2 imperative to avoid significant disruption to the Debtor’s business operations. The  
Bankruptcy Court granted the Cash Management Motion. [*See* Docket No. 28].

3  
4 c) Emergency Motion to Provide Adequate Assurance of Payment to  
the Debtor’s Utilities

5  
6 The Debtor filed an emergency motion [Docket No. 5] (the “Utilities Motion”)  
7 for an order authorizing the Debtor to provide adequate assurance of future payment  
8 to certain utility companies pursuant to § 366(c). The Bankruptcy Court granted the  
Utilities Motion. [*See* Docket No. 22].

9 d) Emergency Motion to Maintain Insurance Programs

10 The Debtor filed an emergency motion [Docket No. 6] (the “Insurance  
11 Motion”) for authority to maintain insurance programs, pay premiums and other  
12 obligations in the ordinary course, and prevent insurance companies from enforcing  
13 ipso facto provisions or otherwise terminating insurance policies without first seeking  
relief from the automatic stay. The Bankruptcy Court granted the Insurance Motion.  
14 [*See* Docket No. 21].

15 e) Emergency Motion to Set Insider Compensation

16 The Debtor filed an emergency motion [Docket No. 11] (the “Motion to Set  
17 Insider Compensation”) for authority to pay insiders their pre-petition salaries as they  
18 come due during the Chapter 11 Case. The Bankruptcy Court granted the Motion to  
Set Insider Compensation on an interim basis [*see* Docket No. 24] and later on a final  
19 basis [*see* Docket No. 90].

20 **5.2 *Motion for Entry of Order: Authorizing (I) Key Employee Retention***  
21 ***Program and (II) Key Employee Incentive Program.***

22 On December 7, 2022, the Debtor filed a motion [Docket No. 279] (the  
23 “KERP/KEIP Motion”) seeking authorization of (a) a key employee retention plan  
and (b) a key employee incentive plan. The United States Trustee filed an objection  
24 to the KERP/KEIP Motion [Docket No. 324] and the Bankruptcy Court later approved  
the KERP/KEIP Motion on February 9, 2023 [Docket No. 436].

25  
26 **5.3 *Estate Professionals, the Committee, and the Patient Care***  
***Ombudsman.***

27 On September 27, 2022, the Bankruptcy Court entered an order approving the  
28

1 employment of Kurtzman Carson Consultants LLC, as claims and noticing agent to  
2 the Debtor. [Docket No. 54]. On November 16, 2022, the Bankruptcy Court entered  
3 an order approving the employment of Ankura Consulting Group, LLC, as financial  
4 advisor to the Debtor. [Docket No. 176]. On November 18, 2022, the Bankruptcy  
5 Court entered an order [Docket No. 198] approving the employment of Hooper,  
6 Lundy & Bookman P.C., as special healthcare regulatory counsel. On December 13,  
2022, the Bankruptcy Court entered an order [Docket No. 292] approving the  
employment of Dentons US LLP, as counsel to the Debtor.

7 Additionally, on December 6, 2022, the Debtor filed a motion [Docket No. 271]  
8 to employ various ordinary course professionals. On January 24, 2023, the  
9 Bankruptcy Court entered an order [Docket No. 400] granting the motion. Since the  
10 Petition Date, the Debtor has employed, pursuant to various filings, ordinary course  
11 professionals that provide an array of important services to the Debtor in the ordinary  
course of business, including legal, accounting, and consulting services.

12 On September 26, 2022, the U.S. Trustee appointed [Docket No. 49] an Official  
13 Committee of Unsecured Creditors (the “Committee”) to represent the interests of  
14 general unsecured creditors. The Committee comprises the following seven members:  
15 (i) McKesson Corporation, (ii) Greenway Health, LLC, (iii) We Klean Inc., (iv)  
16 Mustafa Bilal, DDS, Inc., (v) Vista Village Family Dentistry, (vi) Vitamin D Public  
17 Relations, LLC, and (vii) Pourshirazi & Youssefi Dental Corporation. On December  
18 9, 2022, the Bankruptcy Court entered an order [Docket No. 287] approving the  
19 employment of Pachulski Stang Ziehl & Jones LLP, as counsel to the Committee. On  
November 29, 2022, the Bankruptcy Court entered an order [Docket No. 242]  
approving the employment of FTI Consulting, Inc., as financial advisor to the  
Committee.

20 The U.S. Trustee appointed Dr. Jacob Nathan Rubin, MD, (the “Patient Care  
21 Ombudsman”) to serve as the patient care ombudsman in this Chapter 11 Case,  
22 pursuant to § 333(a). [Docket No. 25]. On October 18, 2022, the Bankruptcy Court  
23 entered orders approving the employment of the following professionals to the Patient  
24 Care Ombudsman: Levene, Neale, Bender, Yoo & Brill LLP, as bankruptcy counsel  
[Docket No. 100]; and Dr. Tim Stacy DNP, ACNP-BC, as consultant [Docket No.  
25 101]. The Patient Care Ombudsman has filed three reports in the Chapter 11 Case  
[Docket Nos. 169, 348, 560].

#### 26 5.4 *Administrative Matters, Reporting and Disclosures.*

27 The Debtor was required to address the various administrative matters attendant  
28 to the commencement of this Chapter 11 Case, which required an extensive amount



1 of work by the Debtor's employees and its professionals. These matters included the  
2 preparation of the *Schedules of Assets and Liabilities* and *Statements of Financial*  
3 *Affairs* for the Debtor's Chapter 11 Case [see Docket Nos. 97, 98], and preparation of  
4 the materials required by the U.S. Trustee, including, without limitation, the 7-Day  
Package.

5 The Debtor has made every effort to comply with its duties under §§ 521, 1106  
6 and 1107 and all applicable U.S. Trustee guidelines, including the filing of the  
7 Debtor's monthly operating reports with the U.S. Trustee. [Docket Nos. 172, 312,  
432, 517.] The Debtor also attended its initial interview with the U.S. Trustee and the  
8 meeting of creditors required under § 341(a).

9 **5.5 Adversary Proceeding against DHCS.**

10 On September 26, 2022, the Debtor filed the *Debtor's Complaint for*  
11 *Declaratory Judgment and Preliminary and Permanent Injunctive Relief, or in the*  
12 *Alternative, for Writ of Mandate Under Code of Civil Procedure 1085* [Docket No.  
13 1] (the "Complaint"), commencing an adversary proceeding (Adv. Pro. No. 22-  
14 90056) against DHCS (the "Adversary Proceeding"). The Complaint sought, among  
15 other things, (i) an order temporarily and permanently enjoining DHCS from  
16 suspending the Debtor from the Medi-Cal program until and unless DHCS affords the  
17 Debtor the rights to which it is entitled under federal law and under the Constitution  
18 and (ii) a Writ of Mandate under Code of Civil Procedure 1085: (1) setting aside  
19 DHCS' suspension of the Debtor's Medi-Cal payments; (2) ordering DHCS to rescind  
20 any notices issued to third-parties, including but not limited to Medi-Cal health plans,  
directing or otherwise compelling them to (x) block transfer patients already assigned  
21 to the Debtor, and (y) assign patients that would otherwise be assigned to the Debtor  
22 to other providers; and (3) compel the payment of approximately \$6.7 million that  
23 was being withheld related to prior provision of in-house dental services to Medi-Cal  
24 beneficiaries.

25 On September 27, 2022, the Debtor filed its *Emergency Motion: (I) to Enforce*  
26 *the Automatic Stay Pursuant to 11 U.S.C. § 362; or, Alternatively, (II) for Temporary*  
27 *Restraining Order; Memorandum of Points and Authorities in Support Thereof; and*  
28 *Declarations in Support Thereof* [Adv. Dkt. No. 3] (the "Motion to Enforce") and  
certain other supporting declarations. The Motion to Enforce sought (A) the entry of  
an order enforcing the automatic stay to prevent DHCS from suspending all Medi-Cal  
payments and taking other related acts; or, alternatively, (2) the entry of order  
restraining and enjoining DHCS from causing immediate and irreparable harm to the  
Debtor, its estate, and thousands of patients by suspending all Medi-Cal payments and  
taking other related acts which would, inevitably, have caused the Debtor to close its

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1 clinics and cease providing essential medical services to low income and rural patients  
2 in Southern California. DHCS objected to the Motion to Enforce and filed, among  
3 other things, *Defendant California Department of Health Care Services' Opposition*  
4 *to Debtor's Emergency Motion: (1) to Enforce the Automatic Stay; or (2) for*  
5 *Temporary Restraining Order* [Adv. Dkt. No. 30]. The Committee filed a statement  
6 in support of the Motion to Enforce [Adv. Dkt. No. 37].

7 On October 26, 2022, the Bankruptcy Court issued its *Findings of Fact and*  
8 *Conclusions of Law re: Emergency Motion to (I) Enforce the Automatic Stay or (II)*  
9 *Alternatively for Temporary Restraining Order* [Adv. Dkt. No. 65] (the "DHCS  
10 Findings of Fact") and *Order on Emergency Motion to (I) Enforce the Automatic Stay*  
11 *or (II) Alternatively for Temporary Restraining Order* [Adv. Dkt. No. 66] (the "DHCS  
12 Order") granting, in part, the Motion to Enforce on the terms and conditions set forth  
13 in the DHCS Order. DHCS filed a *Notice of Appeal and Statement of Election*. [Adv.  
14 Dkt. No. 90] with respect to the DHCS Findings of Fact and DHCS Order, thereby  
15 commencing Case No. 22-CV-01751-GPC-MSB (S.D. Cal.) (the "Appeal").

16 On October 26, 2022, DHCS filed its *Answer to Complaint for Declaratory*  
17 *Judgment and Preliminary and Permanent Injunctive Relief, or in the Alternative, for*  
18 *Writ of Mandate Under Code of Civil Procedure 1085* [Adv. Dkt. No. 67].

19 On November 4, 2022, the Debtor, the Committee and DHCS entered into a  
20 stipulation (the "Stipulation") [Adv. Dkt. No. 73], to participate in a non-binding  
21 mediation to resolve all active disputes between the parties. On November 7, 2022,  
22 the Bankruptcy Court approved the Stipulation. [Adv. Dkt. No. 74].

23 On February 27, 2023, the Debtor filed a *Motion to Approve Compromise*  
24 *Among Debtor, Official Committee of Unsecured Creditors and California*  
25 *Department of Health Care Services Pursuant to Federal Rule of Bankruptcy*  
26 *Procedure 9019* [Docket No. 510] (the "Settlement Motion"). The Bankruptcy Court  
27 approved the Settlement Motion on March 7, 2023 [Docket No. 544] (the "DHCS  
28 9019 Order"). The DHCS 9019 Order sets forth the treatment of the DHCS Claim and  
provides for the allocation of the DAP Sale proceeds among DHCS and Holders of  
other Allowed Claims.

On September 26, 2023, the Debtor filed the *Notice of Filing of Executed*  
*Settlement Agreement Among the Debtor, the Official Committee of Unsecured*  
*Creditors, and the California Department of Health Care Services* [Docket Nos. 510,  
544] [Docket No. 923]. Pursuant to the DHCS 9019 Order, the Debtor, the  
Committee, and DHCS prepared and executed a finalized settlement agreement.

1 On October 17, 2023, the Debtor, DHCS, and the Committee jointly filed the  
2 *Stipulation Among the Debtor, the California Department of Health Care Services*  
3 *and the Official Committee of Unsecured Creditors to (I) Vacate the (A) Findings of*  
4 *Fact and Conclusions of Law re: Emergency Motion to Enforce the Automatic Stay*  
5 *or Alternatively for Temporary Restraining Order [Docket No. 65] and (B) Order on*  
6 *Emergency Motion to Enforce the Automatic Stay or Alternatively for Temporary*  
7 *Restraining Order [Docket No. 66]; and (II) Dismiss the Adversary Proceeding [Adv.*  
8 *Docket No. 133] (the “Vacatur Stipulation”) pursuant to the DHCS Settlement*  
9 *Agreement. On October 18, 2023, the Bankruptcy Court entered an order approving*  
10 *the Vacatur Stipulation [Adv. Docket No. 134] and (a) dismissing the Adversary*  
11 *Proceeding with prejudice and (b) vacating the DHCS Findings of Fact and DHCS*  
12 *Order.*

13 On November 6, 2023, the Debtor and DHCS filed the *Joint Stipulation to*  
14 *Dismiss the Appeal [App. Docket No. 12] (the “Appeal Stipulation”) pursuant to the*  
15 *DHCS Settlement Agreement. On November 7, 2023, the District Court entered an*  
16 *order approving the Appeal Stipulation [App. Docket No. 13] and dismissing the*  
17 *Appeal.*

#### 18 **5.6 The Sale of Substantially All Assets.**

19 On November 10, 2022, the Debtor filed a motion [Docket No. 161] (the “Sale  
20 Motion”) requesting entry of an order (i) authorizing the proposed sale of substantially  
21 all of the Debtor’s assets, (ii) approving the form of the Asset Purchase Agreement  
22 (the “APA”), (iii) approving certain procedures governing the sale process (the “Bid  
23 Procedures”), and (iv) approving certain procedures governing assumption and  
24 rejection of Executory Agreements in connection with the sale. On December 5, 2022,  
25 the Debtor filed a supplement to the Sale Motion with revised Bid Procedures [Docket  
26 No. 276]. On December 8, 2022, the Debtor filed a second supplement to the Sale  
27 Motion, which attached a form APA [Docket No. 285].

28 On December 19, 2022, the Bankruptcy Court entered an order [Docket No.  
321] approving the Bid Procedures. The order provided that all objections to the  
proposed Bid Procedures were overruled and that remaining objections concerning  
the proposed sale were premature.

On January 16, 2023, the Debtor filed a notice [Docket No. 389] to  
counterparties of Executory Agreements that may be assumed and assigned in  
connection with the sale. The Debtor filed a supplemental notice [Docket No. 409] on  
January 27, 2023. Certain counterparties to executory agreements filed objections  
(collectively, the “Cure Objections”) to the notices concerning assumption and



1 assignment. [See Docket Nos. 426, 431, 440, 441, 445, 447, 455, 458, 487].

2 On February 2, 2023, the Debtor filed a notice [Docket No. 418] that the Debtor  
3 received Qualified Bids pursuant to the Bid Procedures and selected designated DAP  
4 Health as the stalking horse bidder. The notice further provided that the Debtor would  
5 conduct an auction on February 6, 2023.

6 On February 9, 2023, the Debtor filed a notice [Docket No. 438] that the Debtor  
7 had adjourned the auction and requested final highest and best bids by February 10,  
8 2023. The next day, on February 10, 2023, the Bankruptcy Court entered an order  
9 vacating deadlines for objections to the sale [Docket No. 443].

10 On February 15, 2023, the Debtor filed a notice [Docket No. 465] that the  
11 Debtor had selected (i) DAP Health as the winning bidder, and (ii) Altamed Health  
12 Services Corporation as the back-up bidder.

13 On February 16, 2023, the Bankruptcy Court entered an order approving  
14 modified deadlines and scheduling a hearing to approve the sale. [Docket No. 476].

15 On February 16, 2023, the Debtor filed a notice [Docket No. 478] to  
16 counterparties to Executory Agreements designated by DAP Health for assumption  
17 and assignment in connection with the sale.

18 On March 1, 2023, the Bankruptcy Court held a hearing to approve the DAP  
19 Sale pursuant to the Sale Motion. At the hearing, the Bankruptcy Court considered  
20 the Cure Objections as well as certain objections (collectively, the “Sale Objections”)  
21 to the DAP Sale as well as any withdrawals thereof. [See Docket Nos. 270, 356, 489,  
22 491]. As set forth in further detail below, the Bankruptcy Court overruled the Sale  
23 Objections.

24 On March 13, 2023, the Bankruptcy Court entered an order [Docket No. 559]  
25 granting the Sale Motion and approving the DAP Sale (the “Sale Order”). In  
26 connection with the DAP Sale, the Debtor and DAP Health entered into that certain  
27 Transition Services Agreement, wherein the parties agree to provide certain services  
28 and support after the Closing of the Sale pending the approval of the CHOW by CMS.  
Subsequent to approval of the CHOW, the Post-Effective Date Debtor will be  
dissolved wherein the Debtor provides certain services to DAP Health.

On July 31, 2023, the Debtor filed the *Notice of Occurrence of Closing of Sale  
to DAP Health, Inc.* [Docket No. 823], which informed the Bankruptcy Court and all  
parties in interest of the occurrence of the Closing Date.

1  
2 After the Effective Date and Closing of the Sale, the Post-Effective Date  
3 Debtor, as described herein, will need to continue to operate until the CHOW  
4 submitted, pursuant to 42 C.F.R § 489.18, by the Debtor and DAP Health is approved  
5 by CMS, which will result in the transfer of the Debtor's Medicare Identification  
6 Number and Medicare Provider Agreement to DAP Health. After the Closing and  
7 Effective Date, DAP Health and the Post-Effective Date Debtor will operate pursuant  
8 to the Transition Services Agreement.

7 **5.7 *Claims Bar Date and Reconciliation.***

8 a) General Bar Date

9 On September 13, 2022, the Bankruptcy Court set a general claims bar date of  
10 November 21, 2022, and March 13, 2023, as the deadline for governmental entities to  
11 file claims [Docket No. 16]. A Notice of Bar Date was published on October 27, 2022,  
12 and October 28, 2022, in the Los Angeles Times, the San Diego Union-Tribune, The  
13 Desert Sun, The Press-Enterprise, the El Latino, the La Prensa Hispana Bilingual  
14 News Paper, the San Bernadino County Sun, and the San Diego Union-Tribune  
15 Español. [Docket No. 157].

14 b) Extended DHCS Bar Date

15 Pursuant to the DHCS Settlement Agreement, the Extended DHCS Bar Date is  
16 set for December 29, 2023, which is the deadline by which DHCS must file a Proof  
17 of Claim for any further General Unsecured Claims against the Debtor for Medi-Cal  
18 overpayments, consistent with the definition in the DHCS Settlement Agreement.

19 c) Administrative Claims Bar Date

20 The Plan contemplates that a deadline will be set by the Bankruptcy Court by  
21 which Holders of Administrative Claims, other than Administrative Claims arising in  
22 the ordinary course of business for the Debtor or Professional Claims, must assert  
23 Administrative Claims or be forever barred, which shall be (a) thirty (30) days after  
24 the Effective Date for Administrative Claims other than Professional Claims, and (b)  
25 sixty (60) days after the Effective Date for Professional Claims. Such requests for  
26 payment may include estimates of amounts through the Effective Date of the Plan.  
27  
28

**SECTION 6.**  
**CONFIRMATION AND VOTING PROCEDURES**

**6.1 *Confirmation Hearing.***

On [ ], the Bankruptcy Court entered the Conditional Approval and Procedures Order. The Confirmation Hearing has been scheduled for January 17, 2024, at 10:00 a.m. (prevailing Pacific Time) to consider (a) final approval of the Combined Plan and Disclosure Statement as providing adequate information pursuant to § 1125 and (b) confirmation of the Combined Plan and Disclosure Statement pursuant to § 1129. The Confirmation Hearing may be adjourned from time to time by the Debtor without further notice, except for an announcement of the adjourned date made at the Confirmation Hearing or by filing a notice with the Bankruptcy Court.

**6.2 *Procedures for Objections.***

Any objection to final approval of the Combined Plan and Disclosure Statement as providing adequate information pursuant to § 1125 and/or confirmation of the Combined Plan and Disclosure Statement must be made in writing and filed with the Bankruptcy Court by no later than January 8, 2024, at 4:00 p.m. (prevailing Pacific Time) and be served in accordance with the Local Bankruptcy Rules of the Bankruptcy Court on the following parties: (i) counsel to the Debtor: Dentons US LLP, 601 South Figueroa Street, Suite 2500, Los Angeles, California 90017 (Attn: Samuel R. Maizel (samuel.maizel@dentons.com) and Tania M. Moyron (tania.moyron@dentons.com)); (ii) financial advisor to the Debtor: Ankura, 2021 McKinney Avenue, Suite 340, Dallas, Texas 75201 (Attn: Charles Pease (charles.pease@ankura.com)); (iii) the Office of the United States Trustee: 880 Front Street, Room 3230, San Diego, California 92101 (Attn: Haeji Hong (haeji.hong@usdoj.gov)); (iv) counsel to the Committee: Pachulski Stang Ziehl & Jones LLP, 10100 Santa Monica Blvd., 13th Floor, Los Angeles, California 90067 (Attn: Jeffrey N. Pomerantz (jpomerantz@pszjlaw.com) and Steven W. Golden (sgolden@pszjlaw.com)); and (v) financial advisor to the Committee: FTI, 350 South Grand Avenue, Suite 3000, Los Angeles, California 90071 (Attn: Cliff Zucker (cliff.zucker@fticonsulting.com) and Narendra Ganti (narendra.ganti@fticonsulting.com)). Unless an objection is timely filed and served, it may not be considered by the Bankruptcy Court at the Confirmation Hearing.

**6.3 *Requirements for Confirmation.***

The Bankruptcy Court will confirm the Combined Plan and Disclosure Statement only if it meets all the applicable requirements of § 1129. Among the

1 requirements for confirmation in the Chapter 11 Case is that the Combined Plan and  
2 Disclosure Statement be: (i) accepted by all Impaired Classes of Claims or, if rejected  
3 by an Impaired Class, that the Combined Plan and Disclosure Statement “does not  
4 discriminate unfairly” against, and is “fair and equitable” with respect to, such Class;  
and (ii) feasible. The Bankruptcy Court must also find that:

- 5 a. the Combined Plan and Disclosure Statement has classified Claims in  
6 a permissible manner;
- 7 b. the Combined Plan and Disclosure Statement complies with the  
8 requirements of Chapter 11 of the Bankruptcy Code; and
- 9 c. the Combined Plan and Disclosure Statement has been proposed in  
10 good faith.

11 The Plan Proponents believe that the Combined Plan and Disclosure Statement  
12 complies, or will comply, with all such requirements.

#### 13 6.4 *Classification of Claims.*

14 Section 1123 provides that a plan must classify the claims of a debtor’s  
15 creditors. In accordance with § 1123, the Combined Plan and Disclosure Statement  
16 divides Claims into Classes and sets forth the treatment for each Class (other than  
17 those claims which pursuant to § 1123(a)(1) need not be and have not been classified).

18 Section 1122 requires the Combined Plan and Disclosure Statement to place a  
19 Claim in a particular Class only if such Claim is substantially similar to the other  
20 Claims in such class. The Combined Plan and Disclosure Statement creates separate  
21 Classes to deal respectively with Priority Non-Tax Claims, various Secured Claims,  
22 General Unsecured Claims, and an Allowed DHCS Claim. The Plan Proponents  
23 believe that the Combined Plan and Disclosure Statement’s classifications place  
substantially similar Claims in the same Class and, thus, meet the requirements of §  
1122.

24 The Bankruptcy Code also requires that a plan provide the same treatment for  
25 each claim of a particular class unless the claim holder agrees to a less favorable  
26 treatment of its claim. The Plan Proponents believe that the Combined Plan and  
27 Disclosure Statement complies with such standard. If the Bankruptcy Court finds  
28 otherwise, however, it could deny confirmation of the Combined Plan and Disclosure  
Statement if the holders of Claims affected do not consent to the treatment afforded  
them under the Combined Plan and Disclosure Statement.

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1  
2 A Claim is placed in a particular Class only to the extent that the Claim falls  
3 within the description of that Class and is classified in other Classes to the extent that  
4 any portion of the Claim falls within the description of such other Classes. A Claim  
5 also is placed in a particular Class for the purpose of receiving distributions pursuant  
6 to the Combined Plan and Disclosure Statement only to the extent that such Claim is  
7 an Allowed Claim in that Class, and such Claim has not been paid, released, or  
8 otherwise settled prior to the Effective Date.

9 The Plan Proponents believe that the Combined Plan and Disclosure Statement  
10 has classified all Claims in compliance with the provisions of § 1122 and applicable  
11 case law. It is possible that a holder of a Claim may challenge the Plan Proponents'  
12 classification of Claims and that the Bankruptcy Court may find that a different  
13 classification is required for the Combined Plan and Disclosure Statement to be  
14 confirmed. If such a situation develops, the Plan Proponents intend, in accordance  
15 with the terms of the Combined Plan and Disclosure Statement, to make such  
16 permissible modifications to the Combined Plan and Disclosure Statement as may be  
17 necessary to permit its confirmation. Any such reclassification could adversely affect  
18 holders of Claims by changing the composition of one or more Classes and the vote  
19 required of such Class or Classes for approval of the Combined Plan and Disclosure  
20 Statement.

21 **EXCEPT AS SET FORTH IN THE COMBINED PLAN AND DISCLOSURE**  
22 **STATEMENT, UNLESS SUCH MODIFICATION OF CLASSIFICATION**  
23 **MATERIALLY ADVERSELY AFFECTS THE TREATMENT OF A HOLDER**  
24 **OF A CLAIM AND REQUIRES RE-SOLICITATION, ACCEPTANCE OF**  
25 **THE COMBINED PLAN AND DISCLOSURE STATEMENT BY ANY**  
26 **HOLDER OF A CLAIM PURSUANT TO THIS SOLICITATION WILL BE**  
27 **DEEMED TO BE A CONSENT TO THE COMBINED PLAN AND**  
28 **DISCLOSURE STATEMENT'S TREATMENT OF SUCH HOLDER OF A**  
**CLAIM REGARDLESS OF THE CLASS AS TO WHICH SUCH HOLDER**  
**ULTIMATELY IS DEEMED TO BE A MEMBER.**

23 The amount of any Impaired Claim that ultimately is Allowed by the  
24 Bankruptcy Court may vary from any estimated Allowed amount of such Claim and,  
25 accordingly, the total Claims that are ultimately Allowed by the Bankruptcy Court  
26 with respect to each Impaired Class of Claims may also vary from any estimates  
27 contained herein with respect to the aggregate Claims in any Impaired Class. Thus,  
28 the actual recovery ultimately received by a particular holder of an Allowed Claim  
may be adversely or favorably affected by the aggregate amount of Claims Allowed  
in the applicable Class. Additionally, any changes to any of the assumptions



1 underlying the estimated Allowed amounts could result in material adjustments to  
2 recovery estimates provided herein or the actual Distribution received by creditors.  
3 The projected recoveries are based on information available to the Debtor as of the  
4 date hereof and reflect the Debtor's view as of the date hereof only.

5 The classification of Claims and the nature of distributions to members of each  
6 Class are summarized herein. The Plan Proponents believe that the consideration, if  
7 any, provided under the Combined Plan and Disclosure Statement to holders of  
8 Allowed Claims reflects an appropriate resolution of their Allowed Claims taking into  
9 account the differing nature and priority of such Claims. The Bankruptcy Court must  
10 find, however, that a number of statutory tests are met before it may confirm the  
11 Combined Plan and Disclosure Statement. Many of these tests are designed to protect  
12 the interests of holders of Claims who are not entitled to vote on the Combined Plan  
13 and Disclosure Statement, or do not vote to accept the Combined Plan and Disclosure  
14 Statement, but who will be bound by the provisions of the Combined Plan and  
15 Disclosure Statement if it is confirmed by the Bankruptcy Court.

#### 16 6.5 *Impaired Claims.*

17 Pursuant to § 1126, only the Holders of Claims in Classes Impaired by the  
18 Combined Plan and Disclosure Statement and receiving a payment or Distribution  
19 under the Combined Plan and Disclosure Statement may vote to accept or reject the  
20 Combined Plan and Disclosure Statement. Pursuant to § 1124, a Class of Claims may  
21 be Impaired if the Combined Plan and Disclosure Statement alters the legal, equitable,  
22 or contractual rights of the holders of such Claims treated in such Class. The Holders  
23 of Claims not Impaired by the Combined Plan and Disclosure Statement are deemed  
24 to accept the Combined Plan and Disclosure Statement and do not have the right to  
25 vote on the Combined Plan and Disclosure Statement. The Holders of Claims in any  
26 Class which will not receive any payment or Distribution or retain any property  
27 pursuant to the Combined Plan and Disclosure Statement are deemed to reject the  
28 Combined Plan and Disclosure Statement and do not have the right to vote. Finally,  
the Holders of Claims whose Claims are not classified under the Combined Plan and  
Disclosure Statement are not entitled to vote on the Combined Plan and Disclosure  
Statement.

Under the Combined Plan and Disclosure Statement, Holders of Claims in the  
Voting Classes – Class 3 (General Unsecured Claims) and Class 4 (Allowed DHCS  
Claim) – are Impaired and are entitled to vote to accept or reject the Combined Plan  
and Disclosure Statement. Holders of Claims in Class 1 (Priority Non-Tax Claims)  
and Class 2 (Secured Claims) are Unimpaired and, therefore, not entitled to vote on



1 the Combined Plan and Disclosure Statement and are deemed to accept the Combined  
2 Plan and Disclosure Statement.

3 **ACCORDINGLY, A BALLOT FOR ACCEPTANCE OR REJECTION**  
4 **OF THE COMBINED PLAN AND DISCLOSURE STATEMENT IS BEING**  
5 **PROVIDED ONLY TO HOLDERS OF CLAIMS IN THE VOTING CLASSES.**

6 **6.6 *Confirmation Without Necessary Acceptances; Cramdown.***

7 In the event that any impaired class of claims does not accept a plan, a debtor  
8 nevertheless may move for confirmation of the plan. A plan may be confirmed, even  
9 if it is not accepted by all impaired classes, if the plan has been accepted by at least  
10 one impaired class of claims, determined without including any acceptance of the plan  
11 by any insider holding a claim in that class, and the plan meets the “cramdown”  
12 requirements set forth in § 1129(b). Section 1129(b) requires that a court find that a  
13 plan (a) “does not discriminate unfairly” and (b) is “fair and equitable,” with respect  
14 to each non-accepting impaired class of claims. Here, the Plan Proponents believe that  
15 such requirements are satisfied, as no holder of a Claim or Interest junior to those in  
16 the Impaired Classes is entitled to receive any property under the Combined Plan and  
17 Disclosure Statement.

18 The concept of “unfair discrimination” is not defined in the Bankruptcy Code,  
19 but case law suggests it exists when a difference in a plan’s treatment of two classes  
20 of equal priority results in a materially lower percentage recovery for the non-  
21 accepting class. The Plan Proponents do not believe that the Plan unfairly  
22 discriminates against any Class of Claims.

23 The Bankruptcy Code provides a nonexclusive definition of the phrase “fair  
24 and equitable.” To determine whether a plan is “fair and equitable,” the Bankruptcy  
25 Code establishes “cramdown” tests for secured creditors, unsecured creditors, and  
26 equity holders, as follows:

- 27 a. **Secured Creditors.** Either (i) each impaired secured creditor retains  
28 its liens securing its secured claim and receives on account of its  
secured claim deferred Cash payments having a present value equal  
to the amount of its allowed secured claim, (ii) each impaired secured  
creditor realizes the “indubitable equivalent” of its allowed secured  
claim or (iii) the property securing the claim is sold free and clear of  
liens with such liens to attach to the proceeds of the sale and the  
treatment of such liens on proceeds to be as provided in clause (i) or  
(ii) above.

b. **Unsecured Creditors.** Either (i) each impaired unsecured creditor receives or retains under the plan property of a value equal to the amount of its allowed claim or (ii) the holders of claims that are junior to the claims of the dissenting class will not receive any property under the plan.

As discussed above, the Plan Proponents believe that the distributions provided under the Combined Plan and Disclosure Statement satisfy the absolute priority rule, where required.

#### 6.7 ***Feasibility.***

Section 1129(a)(11) requires that confirmation of a plan not be likely to be followed by the liquidation, or the need for further financial reorganization, of the Debtor or any successor to the Debtor (unless such liquidation or reorganization is proposed in the Combined Plan and Disclosure Statement). Based on the Debtor's analysis and subject to the financing contingency described below, the Liquidating Trustee and Co-Liquidating Trustee will have sufficient assets to accomplish their tasks under the Combined Plan and Disclosure Statement. Therefore, the Plan Proponents believe that the liquidation pursuant to the Combined Plan and Disclosure Statement will meet the feasibility requirements of the Bankruptcy Code.

#### 6.8 ***Best Interests Test and Liquidation Analysis.***

Even if a plan is accepted by the holders of each class of claims, the Bankruptcy Code requires the Bankruptcy Court to determine that such plan is in the best interests of all holders of claims that are impaired by that plan and that have not accepted the plan. The "best interests" test, as set forth in § 1129(a)(7), requires a court to find either that all members of an impaired class of claims have accepted the plan or that the plan will provide a member who has not accepted the plan with a recovery of property of a value, as of the effective date of the plan, that is not less than the amount that such holder would recover if the debtor were liquidated under chapter 7 of the Bankruptcy Code.

To calculate the probable distribution to holders of each impaired class of claims if the debtor was liquidated under chapter 7, a court must first determine the aggregate dollar amount that would be generated from a debtor's assets if its chapter 11 case was converted to a case under chapter 7 of the Bankruptcy Code. To determine if a plan is in the best interests of each impaired class, the present value of the distributions from the proceeds of a liquidation of the debtor's unencumbered assets and properties, after subtracting the amounts attributable to the costs, expenses, and administrative claims associated with a chapter 7 liquidation, must be compared with

1 the value offered to such impaired classes under the plan. If the hypothetical  
2 liquidation distribution to holders of claims in any impaired class is greater than the  
3 distributions to be received by such parties under the plan, then such plan is not in the  
best interests of the holders of claims in such impaired class.

4 The Debtor, with the assistance of its advisors, has prepared a liquidation  
5 analysis that summarizes the Debtor's best estimate of recoveries by holders of  
6 Claims if the Chapter 11 Case was converted to a case under chapter 7 (the  
"Liquidation Analysis"), which is attached hereto as **Exhibit A**.

7 Based upon the Debtor's current projections, Holders of Allowed  
8 Administrative Claims, Allowed Secured Claims, Allowed General Unsecured  
9 Claims, and a portion of the Allowed DHCS Claim, will be paid in full on the  
10 Effective Date or as soon as practicably thereafter. See **Exhibit A** (Liquidation  
Analysis Supplement) attached hereto.

11 Based upon **Exhibit A** (Liquidation Analysis Supplement) attached hereto, the  
12 Plan Proponents believe that creditors will receive at least as much or more under the  
13 Plan than they would receive if the Chapter 11 Case was converted to a chapter 7 case.

14 ***6.9 Eligibility to Vote on the Combined Plan and Disclosure Statement.***

15 Unless otherwise ordered by the Bankruptcy Court, only Holders of Allowed  
16 Claims in the Voting Classes may vote on the Combined Plan and Disclosure  
17 Statement. Further, subject to the tabulation procedures that were approved by the  
18 Conditional Approval and Procedures Order, in order to vote on the Combined Plan  
19 and Disclosure Statement, Creditors must hold an Allowed Claim in the Voting  
20 Classes, or be the Holder of a Claim that has been temporarily Allowed for voting  
purposes only pursuant to the approved tabulation procedures or under Bankruptcy  
Rule 3018(a).

21 ***6.10 Solicitation Package / Release Opt-Out Election Form.***

22 All Holders of Allowed Claims in the Voting Classes will receive a solicitation  
23 package (the "Solicitation Package"). The Solicitation Packages will contain: (i) the  
24 Combined Plan and Disclosure Statement; (ii) the Conditional Approval and  
25 Procedures Order; (iii) notice of the Confirmation Hearing; (iv) a form of Ballot,  
26 including Voting Instructions and a pre-addressed return envelope; (v) a Release Opt-  
Out Election Form; and (vi) such other materials as the Bankruptcy Court may direct  
or approve or that the Debtor deems appropriate.

1 All other Creditors and parties in interest not entitled to vote on the Combined  
2 Plan and Disclosure Statement will receive only a copy of the notice of Confirmation  
3 Hearing and a Release Opt-Out Election Form.

4 Copies of the Combined Plan and Disclosure Statement shall be available on  
5 the Claims and Balloting Agent's website at <https://www.kccllc.net/BorregoHealth>.  
6 Any creditor or party-in-interest can request a hard copy of the Combined Plan and  
7 Disclosure Statement be sent to them by regular mail by calling the Claims and  
8 Balloting Agent at (866) 967-0670 (U.S. & Canada) during regular business hours.

9 **IN ADDITION TO OTHER PARTIES WHO WILL BE CONSIDERED**  
10 **RELEASING PARTIES, ANY HOLDER OF A CLAIM THAT DOES NOT**  
11 **AFFIRMATIVELY OPT-OUT OF THE THIRD PARTY RELEASE**  
12 **CONTAINED IN SECTION 17 HEREOF BY TIMELY AND PROPERLY**  
13 **COMPLETING AND RETURNING A RELEASE OPT-OUT ELECTION**  
14 **FORM WILL BE CONSIDERED A RELEASING PARTY IN RELATION TO**  
15 **THE THIRD PARTY RELEASE UNDER THE COMBINED PLAN AND**  
16 **DISCLOSURE STATEMENT.**

17 **6.11 *Voting Procedures, Voting Deadline, and Deadline to Submit the***  
18 ***Release Opt-Out Election.***

19 The Voting Record Date for determining which Holders of Claims in the  
20 Voting Classes may vote on the Combined Plan and Disclosure Statement is  
21 November 28, 2023.

22 In order for a Creditor's Ballot to count, the Creditor must (1) complete, date,  
23 and properly execute the Ballot and (2) properly deliver the Ballot to the Claims and  
24 Balloting Agent by either (a) mailing the Ballot via First Class Mail to the Claims and  
25 Balloting Agent at the following address: Borrego Health Ballot Processing c/o  
26 Kurtzman Carson Consultants LLC, 222 N. Pacific Coast Highway, Suite 300, El  
27 Segundo, CA 90245; (b) overnight delivery; (c) hand delivery; or (d) submitting the  
28 Ballot by electronically uploading the Ballot on the Claims and Balloting Agent's  
online balloting platform at <https://www.kccllc.net/BorregoHealth>. Instructions for  
casting a Ballot will be available on the Claims and Balloting Agent's website.

Ballots must be submitted electronically, or the Claims and Balloting Agent  
must actually receive physical, original Ballots by mail, overnight, or hand delivery,  
on or before the Voting Deadline, which is **January 8, 2024, at 4:00 p.m. (prevailing  
Pacific Time)**. Subject to the tabulation procedures approved by the Conditional  
Approval and Procedures Order, Creditors may not change their vote once a Ballot is  
submitted electronically or the Claims and Balloting Agent receives their original

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1 paper Ballot. Subject to the tabulation procedures approved by the Conditional  
2 Approval and Procedures Order, any Ballot that is timely and properly submitted  
3 electronically or received physically will be counted and will be deemed to be cast as  
4 an acceptance, rejection, or abstention, as the case may be, of the Combined Plan and  
Disclosure Statement.

5 In order to be effective, Release Opt-Out Election Form for Holders of Claims  
6 entitled to opt out of being a Releasing Party in connection with the Third Party  
7 Release contained in Section 17.2(b) must be received by the Claims and Balloting  
8 Agent by the Voting Deadline, which is **January 8, 2024, at 4:00 p.m. (prevailing  
Pacific Time)**. Each Release Opt-Out Election Form must be properly delivered to  
9 the Claims and Balloting Agent by either (a) mailing via First Class mail the Release  
10 Opt-Out Election Form to the Claims and Balloting Agent at the following address:  
Borrego Health Ballot Processing c/o Kurtzman Carson Consultants LLC, 222 N.  
11 Pacific Coast Highway, Suite 300, El Segundo, CA 90245; (b) overnight courier; (c)  
hand delivery; or (d) uploading the Release Opt-Out Election Form on the Claims and  
12 Balloting Agent's online opt-out portal at <https://www.kccllc.net/BorregoHealth>.

13 **IF YOU ARE ENTITLED TO VOTE ON THE COMBINED PLAN AND**  
14 **DISCLOSURE STATEMENT, YOU ARE URGED TO COMPLETE, DATE,**  
15 **SIGN, AND PROMPTLY MAIL OR UPLOAD THE BALLOT YOU**  
16 **RECEIVE. PLEASE BE SURE TO COMPLETE ALL BALLOT ITEMS**  
17 **PROPERLY AND LEGIBLY. IF YOU ARE A HOLDER OF A CLAIM**  
18 **ENTITLED TO VOTE ON THE COMBINED PLAN AND DISCLOSURE**  
19 **STATEMENT AND YOU DID NOT RECEIVE A BALLOT, YOU RECEIVED**  
20 **A DAMAGED BALLOT, OR YOU LOST YOUR BALLOT, OR IF YOU HAVE**  
21 **ANY QUESTIONS CONCERNING THE COMBINED PLAN AND**  
22 **DISCLOSURE STATEMENT OR PROCEDURES FOR VOTING ON THE**  
23 **COMBINED PLAN AND DISCLOSURE STATEMENT, PLEASE CONTACT**  
24 **THE CLAIMS AND BALLOTING AGENT BY (I) TELEPHONE AT (888) 647-**  
25 **174 (U.S./CANADA) OR (II) EMAIL AT [BorregoHealthinfo@kccllc.com](mailto:BorregoHealthinfo@kccllc.com). THE**  
26 **CLAIMS AND BALLOTING AGENT IS NOT AUTHORIZED TO, AND**  
27 **WILL NOT, PROVIDE LEGAL ADVICE.**

28 **6.12 *Acceptance of the Combined Plan and Disclosure Statement.***

If you are a Holder of a Claim in one of the Voting Classes, your acceptance of  
the Combined Plan and Disclosure Statement is important. In order for the Combined  
Plan and Disclosure Statement to be accepted by an Impaired Class of Claims, a  
majority in number (*i.e.*, more than half) and two-thirds in dollar amount of the Claims  
voting (of each Impaired Class of Claims) must vote to accept the Combined Plan and  
Disclosure Statement. At least one Impaired Class of Creditors, excluding the votes



1 of insiders, must actually vote to accept the Combined Plan and Disclosure Statement.  
2 The Debtor urges that you vote to accept the Combined Plan and Disclosure  
3 Statement.

4 **SECTION 7.**  
5 **CERTAIN RISK FACTORS, TAX CONSEQUENCES,**  
6 **AND OTHER DISCLOSURES**

7 **7.1 *Certain Risk Factors to be Considered.***

8 THE COMBINED PLAN AND DISCLOSURE STATEMENT AND ITS  
9 IMPLEMENTATION ARE SUBJECT TO CERTAIN RISKS, INCLUDING, BUT  
10 NOT LIMITED TO, THE RISK FACTORS SET FORTH BELOW. HOLDERS OF  
11 CLAIMS WHO ARE ENTITLED TO VOTE ON THE COMBINED PLAN AND  
12 DISCLOSURE STATEMENT SHOULD READ AND CAREFULLY CONSIDER  
13 THE RISK FACTORS, AS WELL AS THE OTHER INFORMATION SET FORTH  
14 IN THE COMBINED PLAN AND DISCLOSURE STATEMENT AND THE  
15 DOCUMENTS DELIVERED TOGETHER HERewith OR REFERRED TO OR  
16 INCORPORATED BY REFERENCE HEREIN, BEFORE DECIDING WHETHER  
17 TO VOTE TO ACCEPT OR REJECT THE COMBINED PLAN AND  
18 DISCLOSURE STATEMENT. THESE FACTORS SHOULD NOT, HOWEVER,  
19 BE REGARDED AS CONSTITUTING THE ONLY RISKS INVOLVED IN  
20 CONNECTION WITH THE COMBINED PLAN AND DISCLOSURE  
21 STATEMENT AND ITS IMPLEMENTATION.

22 **(a) *The Combined Plan and Disclosure Statement May Not Be***  
23 ***Accepted.***

24 The Plan Proponents can make no assurances that the requisite acceptances of  
25 the Combined Plan and Disclosure Statement will be received, and the Debtor may  
26 need to obtain acceptances of an alternative plan for the Debtor, or otherwise, that  
27 may not have the support of the creditors and/or may be required to liquidate the  
28 Estate under chapter 7. There can be no assurance that the terms of any alternative  
arrangement or plan would be similar to or as favorable to creditors as those proposed  
in the Combined Plan and Disclosure Statement.

**(b) *The Combined Plan and Disclosure Statement May Not Be***  
***Confirmed.***

Even if the Plan Proponents receive the requisite acceptances, there is no  
assurance that the Bankruptcy Court, which may exercise substantial discretion as a  
court of equity, will confirm the Combined Plan and Disclosure Statement. Even if



1 the Bankruptcy Court determined that the Combined Plan and Disclosure Statement  
2 and the balloting procedures and results were appropriate, the Bankruptcy Court could  
3 still decline to confirm the Combined Plan and Disclosure Statement if it finds that  
4 any of the statutory requirements for confirmation had not been met. As is described  
5 in greater detail in Section 6.3, § 1129 sets forth the requirements for confirmation of  
6 a chapter 11 plan. While, as more fully set forth Section 6, the Plan Proponents believe  
7 that the Combined Plan and Disclosure Statement complies with or will comply with  
8 all such requirements, there can be no guarantee that the Bankruptcy Court will agree.

9 Moreover, there can be no assurance that modifications to the Combined Plan  
10 and Disclosure Statement will not be required for Confirmation or that such  
11 modifications would not necessitate the re-solicitation of votes. If the Combined Plan  
12 and Disclosure Statement is not confirmed, it is unclear what distributions holders of  
13 Claims ultimately would receive with respect to their Claims in a subsequent plan of  
14 liquidation. If an alternative could not be agreed to, it is possible that the Debtor would  
15 have to liquidate its remaining assets in chapter 7, in which case it is likely that the  
16 Holders of Allowed Claims would receive substantially less favorable treatment than  
17 they would receive under the Combined Plan and Disclosure Statement.

18 (c) **Distributions to Holders of Allowed Claims Under the Combined**  
19 **Plan and Disclosure Statement May be Inconsistent with**  
20 **Projections.**

21 Projected Distributions are based upon good faith estimates of the total amount  
22 of Claims ultimately Allowed and the funds available for Distribution. There can be  
23 no assurance that the estimated Claim amounts set forth in the Combined Plan and  
24 Disclosure Statement are correct. These estimated amounts are based on certain  
25 assumptions with respect to a variety of factors. Both the actual amount of Allowed  
26 Claims in a particular Class and the funds available for distribution to such Class may  
27 differ from the Debtor's estimates. If the total amount of Allowed Claims in a Class  
28 is higher than the Debtor's estimates, or the funds available for distribution to such  
Class are lower than the Debtor's estimates, the percentage recovery to Holders of  
Allowed Claims in such Class will be less than projected.

(d) **Objections to Classification of Claims.**

Section 1122 provides that a plan may place a claim in a particular class only  
if such claim is substantially similar to the other claims in such class. As is described  
in greater detail in Section 6.4, the Plan Proponents believe that the classification of  
Claims under the Combined Plan and Disclosure Statement complies with the  
requirements set forth in the Bankruptcy Code. Nevertheless, there can be no  
assurance the Bankruptcy Court will reach the same conclusion.

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1 To the extent that the Bankruptcy Court finds that a different classification is  
2 required for the Combined Plan and Disclosure Statement to be confirmed, the Plan  
3 Proponents would seek to (i) modify the Combined Plan and Disclosure Statement to  
4 provide for whatever classification might be required for Confirmation and (ii) use  
5 the acceptances received from any Holder of Claims pursuant to this solicitation for  
6 the purpose of obtaining the approval of the Class or Classes of which such holder  
7 ultimately is deemed to be a member. Any such reclassification of Claims, although  
8 subject to the notice and hearing requirements of the Bankruptcy Code, could  
9 adversely affect the Class in which such Holder was initially a member, or any other  
10 Class under the Combined Plan and Disclosure Statement, by changing the  
11 composition of such Class and the vote required for approval of the Combined Plan  
12 and Disclosure Statement. There can be no assurance that the Bankruptcy Court, after  
13 finding that a classification was inappropriate and requiring a reclassification, would  
14 approve the Combined Plan and Disclosure Statement based upon such  
15 reclassification. Except to the extent that modification of classification in the  
16 Combined Plan and Disclosure Statement requires re-solicitation, the Plan Proponents  
17 will, in accordance with the Bankruptcy Code and the Bankruptcy Rules, seek a  
18 determination by the Bankruptcy Court that acceptance of the Combined Plan and  
19 Disclosure Statement by any Holder of Claims pursuant to this solicitation will  
20 constitute a consent to the Combined Plan and Disclosure Statement's treatment of  
21 such Holder, regardless of the Class as to which such holder is ultimately deemed to  
22 be a member. The Plan Proponents believe that under the Bankruptcy Rules, they  
23 would be required to resolicit votes for or against the Combined Plan and Disclosure  
24 Statement only when a modification adversely affects the treatment of the Claim of  
25 any Holder.

18 The Bankruptcy Code also requires that the Combined Plan and Disclosure  
19 Statement provide the same treatment for each Claim of a particular Class unless the  
20 Holder of a particular Claim agrees to a less favorable treatment of its Claim. The  
21 Plan Proponents believe that the Combined Plan and Disclosure Statement complies  
22 with the requirement of equal treatment. To the extent that the Bankruptcy Court finds  
23 that the Combined Plan and Disclosure Statement does not satisfy such requirement,  
24 the Bankruptcy Court could deny confirmation of the Combined Plan and Disclosure  
25 Statement. Issues or disputes relating to classification and/or treatment could result in  
a delay in the confirmation and consummation of the Combined Plan and Disclosure  
Statement and could increase the risk that the Combined Plan and Disclosure  
Statement will not be consummated.

26 (e) **Failure to Consummate the Combined Plan and Disclosure**  
27 **Statement.**  
28

1 Although the Plan Proponents believe that the Effective Date will occur and  
2 may occur quickly after the Confirmation Date, there can be no assurance as to such  
3 timing, or as to whether the Effective Date will, in fact, occur.

4 ***(f) The Releases May Not Be Approved.***

5 There can be no assurance that the releases, as provided in Section 17, will be  
6 granted. Failure of the Bankruptcy Court to grant such relief may result in a plan that  
7 differs from the Combined Plan and Disclosure Statement or the Plan not being  
8 confirmed.

9 ***(g) Reductions to Estimated Creditor Recoveries.***

10 The Allowed amount of Claims in any Class could be greater than projected,  
11 which, in turn, could cause the amount of Distributions to creditors in such Class to  
12 be reduced substantially. The amount of cash realized from the monetization of the  
13 Debtor's remaining assets could be less than anticipated, which could cause the  
14 amount of Distributions to creditors to be reduced substantially.

15 ***7.2 Certain U.S. Federal Income Tax Consequences.***

16 The following discussion is a summary of certain material U.S. federal income  
17 tax consequences of the Combined Plan and Disclosure Statement to the Debtor and  
18 to certain Holders (which solely for purposes of this discussion means the beneficial  
19 owner for U.S. federal income tax purposes) of Claims. The following summary does  
20 not address the U.S. federal income tax consequences to holders of Claims not entitled  
21 to vote on the Combined Plan and Disclosure Statement. This summary is based on  
22 the Internal Revenue Code, Treasury Regulations promulgated and proposed  
23 thereunder, judicial decisions, and published administrative rules and  
24 pronouncements of the IRS, all as in effect on the date hereof and all of which are  
25 subject to change or differing interpretations, possibly with retroactive effect. No legal  
26 opinions have been requested or obtained from counsel with respect to any of the tax  
27 aspects of the Combined Plan and Disclosure Statement and no rulings have been or  
28 will be requested from the IRS with respect to the any of the issues discussed below.  
The discussion below is not binding upon the IRS or the courts. No assurance can be  
given that the IRS would not assert, or that a court would not sustain, a different  
position than any position discussed herein.

This discussion does not purport to address all aspects of U.S. federal income  
taxation that may be relevant to the Debtor or to certain holders of Claims in light of  
their individual circumstances, nor does the discussion deal with tax issues with  
respect to holders of Claims subject to special treatment under the U.S. federal income

1 tax laws (including, for example, insurance companies; banks or other financial  
2 institutions; brokers, dealers, or traders in securities; real estate investment trusts;  
3 governmental authorities or agencies; tax-exempt organizations; retirement plans;  
4 individual retirement or other tax-deferred accounts; certain expatriates or former  
5 long-term residents of the United States; small business investment companies;  
6 regulated investment companies; S corporations, partnerships, or other pass-through  
7 entities for U.S. federal income tax purposes and their owners; persons whose  
8 functional currency is not the U.S. dollar; persons who use a mark-to-market method  
9 of accounting; persons required to report income on an applicable financial statement;  
10 persons holding Claims as part of a straddle, hedge, constructive sale, conversion  
11 transaction, or other integrated transaction; and persons who are not U.S. holders (as  
12 defined below)). Furthermore, this discussion assumes that a holder of a Claim holds  
13 such claim as a “capital asset” within the meaning of section 1221 of the Internal  
14 Revenue Code (generally property held for investment). This discussion does not  
15 address any U.S. federal non-income (including estate or gift), state, local, or foreign  
16 taxation, alternative minimum tax, or the Medicare tax on certain net investment  
17 income.

18 If a partnership (or other entity or arrangement classified as a partnership for  
19 U.S. federal income tax purposes) is a holder of Claims, the U.S. federal income tax  
20 treatment of a partner in the partnership will generally depend on the status of the  
21 partner and the activities of the partnership. A holder of a Claim that is a partnership  
22 and the partners in such partnership should consult their tax advisors with regard to  
23 the U.S. federal income tax consequences of the Combined Plan and Disclosure  
24 Statement.

25 **THE FOLLOWING SUMMARY IS FOR INFORMATIONAL**  
26 **PURPOSES ONLY AND IS NOT A SUBSTITUTE FOR CAREFUL TAX**  
27 **PLANNING AND ADVICE BASED UPON THE INDIVIDUAL**  
28 **CIRCUMSTANCES PERTAINING TO A HOLDER OF A CLAIM. EACH**  
**HOLDER OF A CLAIM IS URGED TO CONSULT WITH SUCH HOLDER’S**  
**TAX ADVISORS CONCERNING THE U.S. FEDERAL, STATE, LOCAL,**  
**FOREIGN, AND OTHER TAX CONSEQUENCES OF THE COMBINED**  
**PLAN AND DISCLOSURE STATEMENT.**

29 *(a) **Tax Consequences for U.S. Holders of Certain Claims.***

30 Generally, a Holder of a Claim should in most, but not all, circumstances  
31 recognize gain or loss equal to the difference between the “amount realized” by such  
32 Holder in exchange for its Claim and such Holder’s adjusted tax basis in the Claim.  
33 The “amount realized” is equal to the sum of the cash and the fair market value of any  
34 other consideration received under a plan of reorganization in respect of a Holder’s

1 Claim. The tax basis of a Holder in a Claim will generally be equal to the Holder's  
2 cost therefor. To the extent applicable, the character of any recognized gain or loss  
3 (e.g., ordinary income, or short-term or long-term capital gain or loss) will depend  
4 upon the status of the Holder, the nature of the Claim in the Holder's hands, the  
5 purpose and circumstances of its acquisition, the Holder's holding period of the  
6 Claim, and the extent to which the Holder previously claimed a deduction for the  
7 worthlessness of all or a portion of the Claim. Generally, if the Claim is a capital asset  
8 in the Holder's hands, any gain or loss realized will generally be characterized as  
9 capital gain or loss, and will constitute long-term capital gain or loss if the Holder has  
10 held such Claim for more than one year.

11 A creditor who receives Cash in satisfaction of its Claims may recognize  
12 ordinary income or loss to the extent that any portion of such consideration is  
13 characterized as accrued interest. A creditor who did not previously include in income  
14 accrued but unpaid interest attributable to its Claim, and who receives a distribution  
15 on account of its Claim pursuant to the Plan, will be treated as having received interest  
16 income to the extent that any consideration received is characterized for U.S. federal  
17 income tax purposes as interest, regardless of whether such creditor realizes an overall  
18 gain or loss as a result of surrendering its Claim. A creditor who previously included  
19 in its income accrued but unpaid interest attributable to its Claim should recognize an  
20 ordinary loss to the extent that such accrued but unpaid interest is not satisfied,  
21 regardless of whether such creditor realizes an overall gain or loss as a result of the  
22 distribution it may receive under the Plan on account of its Claim.

23 Under the Plan, the Holders of certain Claims, including General Unsecured  
24 Claims in Class 3, will likely receive only a partial distribution of their Allowed  
25 Claims. Whether the applicable Holder of such Claims will recognize a loss or any  
26 other tax treatment will depend upon facts and circumstances that are specific to the  
27 nature of the Holder and its Claims. Creditors should consult their own tax advisors.

28 (b) **Tax Consequences in Relation to Liquidating Trust.**

As of the Effective Date, the Liquidating Trust will be established for the  
benefit of the holders of certain Allowed Claims. The tax consequences of the Plan in  
relation to the Liquidating Trust and the Beneficiaries thereof are subject to  
uncertainties due to the complexity of the Plan and the lack of interpretative authority  
regarding certain changes in the tax law.

Allocations of taxable income of the Liquidating Trust (other than taxable  
income allocable to the Liquidating Trust's claims reserves) among Holders of Claims  
will be determined by reference to the manner in which an amount of cash equal to  
such taxable income would be distributed (were such cash permitted to be distributed



1 at such time) if, immediately prior to such deemed distribution, the Liquidating Trust  
2 had distributed all of its assets (valued at their tax book value) to the holders of the  
3 beneficial interests in the Liquidating Trust, adjusted for prior taxable income and loss  
4 and taking into account all prior and concurrent distributions from the Liquidating  
5 Trust. Similarly, taxable loss of the Liquidating Trust will be allocated by reference  
6 to the manner in which an economic loss would be borne immediately after a  
7 liquidating distribution of the remaining trust assets.

8 The tax book value of the trust assets for this purpose will equal their fair  
9 market value on the Effective Date, adjusted in accordance with tax accounting  
10 principles prescribed by the Tax Code, applicable Treasury Regulations, and other  
11 applicable administrative and judicial authorities and pronouncements. Uncertainties  
12 with regard to federal income tax consequences of the Plan may arise due to the  
13 inherent nature of estimates of value that will impact tax liability determinations.

14 Subject to definitive guidance from the IRS or a court of competent jurisdiction  
15 to the contrary (including the receipt of an IRS private letter ruling if the Liquidating  
16 Trustee so requests one, or the receipt of an adverse determination by the IRS upon  
17 audit if not contested by the Liquidating Trustee), the Liquidating Trustee may (a)  
18 elect to treat any trust assets allocable to, or retained on account of, Disputed Claims  
19 (the “Trust Claims Reserve”) as a “disputed ownership fund” governed by Treasury  
20 Regulation section 1.468B-9, and (b) to the extent permitted by applicable law, report  
21 consistently with the foregoing for state and local income tax purposes. Accordingly,  
22 any Trust Claims Reserve will be subject to tax annually on a separate entity basis on  
23 any net income earned with respect to the trust assets in such reserves, and all  
24 distributions from such reserves will be treated as received by holders in respect of  
25 their Claims as if distributed by the Debtor. All parties (including, without limitation,  
26 the Liquidating Trustee and the holders of beneficial interests in the Liquidating  
27 Trust) will be required to report for tax purposes consistently with the foregoing.

28 The Liquidating Trust is intended to qualify as a liquidating trust for federal  
income tax purposes. In general, a liquidating trust is not a separate taxable entity but  
rather is treated for federal income tax purposes as a “grantor” trust (i.e., a pass-  
through entity). The IRS, in Revenue Procedure 94-45, 1994.28 I.R.B. 124, set forth  
the general criteria for obtaining an IRS ruling as to the grantor trust status of a  
liquidating trust under a chapter 11 plan. The Liquidating Trust has been structured  
with the intention of complying with such general criteria. Pursuant to the Plan and  
Liquidating Trust Agreement, and in conformity with Revenue Procedure 94-45,  
*supra*, all parties (including the Liquidating Trustee and the holders of beneficial  
interests in the Liquidating Trust) are required to treat for federal income tax purposes,  
the Liquidating Trust as a grantor trust of which the holders of the applicable Allowed



1 Claims are the owners and grantors. While the following discussion assumes that the  
2 Liquidating Trust would be so treated for federal income tax purposes, no ruling has  
3 been requested from the IRS concerning the tax status of the Liquidating Trust as a  
4 grantor trust. Accordingly, there can be no assurance that the IRS would not take a  
5 contrary position to the classification of the Liquidating Trust as a grantor trust. If the  
6 IRS were to challenge successfully such classification, the federal income tax  
consequences to the Liquidating Trust and the Beneficiaries thereof could materially  
vary from those discussed herein.

7 In general, each creditor who is a Liquidating Trust Beneficiary will recognize  
8 gain or loss in an amount equal to the difference between (i) the “amount realized” by  
9 such Liquidating Trust Beneficiary in satisfaction of its applicable Allowed Claim,  
10 and (ii) such Liquidating Trust Beneficiary’s adjusted tax basis in such Claim. The  
11 “amount realized” by a Liquidating Trust Beneficiary will equal the sum of cash and  
12 the aggregate fair market value of the property received by such party pursuant to the  
13 Plan (such as a Liquidating Trust Beneficiary’s undivided beneficial interest in the  
14 assets transferred to the Liquidating Trust). Where gain or loss is recognized by a  
15 Liquidating Trust Beneficiary in respect of its Allowed Claim, the character of such  
16 gain or loss (*i.e.*, long-term or short-term capital, or ordinary income) will be  
determined by a number of factors including the tax status of the party, whether the  
Claim constituted a capital asset in the hands of the party and how long it had been  
held, whether the Claim was originally issued at a discount or acquired at a market  
discount and whether and to what extent the party had previously claimed a bad debt  
deduction in respect of the Claim.

17 After the Effective Date, any amount that a creditor receives as a Distribution  
18 from the Liquidating Trust in respect of its beneficial interest in the Liquidating Trust  
19 should not be included, for federal income tax purposes, in the party’s amount realized  
20 in respect of its Allowed Claim, but should be separately treated as a distribution  
received in respect of such party’s beneficial interest in the Liquidating Trust.

21 In general, a Liquidating Trust Beneficiary’s aggregate tax basis in its  
22 undivided beneficial interest in the assets transferred to the Liquidating Trust will  
23 equal the fair market value of such undivided beneficial interest as of the Effective  
24 Date and the Liquidating Trust Beneficiary’s holding period in such assets will begin  
25 the day following the Effective Date. Distributions to any Liquidating Trust  
26 Beneficiary will be allocated first to the original principal portion of the Liquidating  
27 Trust Beneficiary’s Allowed Claim as determined for federal tax purposes, and then,  
28 to the extent the consideration exceeds such amount, to the remainder of such Claim.  
However, there is no assurance that the IRS will respect such allocation for federal  
income tax purposes.

1 For all federal income tax purposes, all parties (including the Liquidating  
2 Trustee and the holders of beneficial interests in the Liquidating Trust) will treat the  
3 transfer of assets to the Liquidating Trust, in accordance with the terms of the Plan  
4 and Liquidating Trust Agreement, as a transfer of those assets directly to the holders  
5 of the applicable Allowed Claims followed by the transfer of such assets by such  
6 Holders to the Liquidating Trust. Consistent therewith, all parties will treat the  
7 Liquidating Trust as a grantor trust of which such holders are to be owners and  
8 grantors. Thus, such holders (and any subsequent holders of interests in the  
9 Liquidating Trust) will be treated as the direct owners of an undivided beneficial  
10 interest in the assets of the Liquidating Trust for all federal income tax purposes.  
11 Accordingly, each holder of a beneficial interest in the Liquidating Trust will be  
12 required to report on its federal income tax return(s) the holder's allocable share of all  
13 income, gain, loss, deduction, or credit recognized or incurred by the Liquidating  
14 Trust.

15 The Liquidating Trust's taxable income will be allocated to the holders of  
16 beneficial interests in the Liquidating Trust in accordance with each such holder's pro  
17 rata share. The character of items of income, deduction and credit to any holder and  
18 the ability of such holder to benefit from any deductions or losses may depend on the  
19 particular situation of such holder.

20 The federal income tax reporting obligation of a holder of a beneficial interest  
21 in the Liquidating Trust is not dependent upon the Liquidating Trust distributing any  
22 cash or other proceeds. Therefore, a holder of a beneficial interest in the Liquidating  
23 Trust may incur a federal income tax liability regardless of the fact that the  
24 Liquidating Trust has not made, or will not make, any concurrent or subsequent  
25 distributions to the holder. If a holder incurs a federal tax liability but does not receive  
26 distributions commensurate with the taxable income allocated to it in respect of its  
27 beneficial interests in the Liquidating Trust it holds, the holder may be allowed a  
28 subsequent or offsetting loss.

29 The Liquidating Trustee will file with the IRS returns for the Liquidating Trust  
30 as a grantor trust pursuant to Treasury Regulations section 1.671-4(a). The  
31 Liquidating Trust will also send to each holder of a beneficial interest in the  
32 Liquidating Trust a separate statement setting forth the holder's share of items of  
33 income, gain, loss, deduction, or credit and will instruct the holder to report such items  
34 on its federal income tax return.

35 Events subsequent to the date of this Disclosure Statement, such as the  
36 enactment of additional tax legislation, could also change the federal income tax  
37 consequences of the Plan and the transactions contemplated thereunder.

(c) **Information Reporting and Withholding.**

In connection with the Combined Plan and Disclosure Statement, the Debtor will comply with all applicable withholding and information reporting requirements imposed by U.S. federal, state, local, and foreign taxing authorities, and all Distributions under the Combined Plan and Disclosure Statement will be subject to those withholding and information reporting requirements. Holders of Claims may be required to provide certain tax information as a condition to receiving Distributions pursuant to the Combined Plan and Disclosure Statement.

In general, information reporting requirements may apply to Distributions pursuant to the Combined Plan and Disclosure Statement. Additionally, under the backup withholding rules, a holder may be subject to backup withholding with respect to Distributions made pursuant to the Combined Plan and Disclosure Statement, unless a U.S. holder provides the applicable withholding agent with a taxpayer identification number, certified under penalties of perjury, as well as certain other information, or otherwise establish an exemption from backup withholding. Backup withholding is not an additional tax. Any amounts withheld under the backup withholding rules will be allowed as a credit against a U.S. holder's U.S. federal income tax liability, if any, and may entitle a U.S. holder to a refund, provided the required information is timely furnished to the IRS.

In addition, from an information reporting perspective, Treasury Regulations generally require disclosure by a taxpayer on its U.S. federal income tax return of certain types of transactions in which the taxpayer participated, including, among other types of transactions, certain transactions that result in the taxpayer's claiming a loss in excess of specified thresholds. Holders of Claims are urged to consult their tax advisors regarding these regulations and whether the transactions contemplated by the Combined Plan and Disclosure Statement would be subject to these regulations and require disclosure on the holder's tax returns.

**THE U.S. FEDERAL INCOME TAX CONSEQUENCES OF THE COMBINED PLAN AND DISCLOSURE STATEMENT ARE COMPLEX. THE FOREGOING SUMMARY DOES NOT DISCUSS ALL ASPECTS OF U.S. FEDERAL INCOME TAXATION THAT MAY BE RELEVANT TO A PARTICULAR HOLDER OF A CLAIM IN LIGHT OF SUCH HOLDER'S CIRCUMSTANCES. EACH HOLDER OF A CLAIM IS URGED TO CONSULT WITH SUCH HOLDER'S TAX ADVISORS CONCERNING THE U.S. FEDERAL, STATE, LOCAL, FOREIGN, AND OTHER TAX CONSEQUENCES OF THE COMBINED PLAN AND DISCLOSURE STATEMENT.**

1           7.3   ***Releases, Exculpations, and Injunctions.***

2           This Combined Plan and Disclosure Statement contains certain releases,  
3           exculpations, and injunction language. Parties are urged to read these provisions  
4           carefully to understand how Confirmation and consummation of the Plan will affect  
          any Claim, interest, right, or action with regard to the Debtor and certain third parties.

5           **THE COMBINED PLAN AND DISCLOSURE STATEMENT SHALL**  
6           **BIND ALL HOLDERS OF CLAIMS AGAINST THE DEBTOR TO THE**  
7           **FULLEST EXTENT AUTHORIZED OR PROVIDED UNDER THE**  
8           **APPLICABLE PROVISIONS OF THE BANKRUPTCY CODE AND ALL**  
          **OTHER APPLICABLE LAW.**

9           7.4   ***Alternatives to the Combined Plan and Disclosure Statement.***

10          If the requisite acceptances are not received or the Combined Plan and  
11          Disclosure Statement is not confirmed and consummated, the theoretical alternatives  
12          to the Combined Plan and Disclosure Statement would be (a) formulation of an  
13          alternative chapter 11 plan, (b) conversion of the Chapter 11 Case to a case under  
14          chapter 7 of the Bankruptcy Code, or (c) dismissal of the Chapter 11 Case. As  
15          discussed below, the Plan Proponents do not believe that any of these alternatives,  
          even if viable, would afford holders of Claims a greater recovery than what is  
          provided by the Combined Plan and Disclosure Statement.

16          If the Combined Plan and Disclosure Statement is not confirmed, then the  
17          Debtor or any other party in interest could attempt to formulate a different plan. The  
18          additional costs, including, among other amounts, additional professional fees, all of  
19          which would constitute Administrative Claims (subject to allowance thereof),  
20          however, may be so significant that one or more parties in interest could request that  
          the Chapter 11 Case be converted to chapter 7. At this time, the Plan Proponents do  
          not believe that there are viable alternative plans available to the Debtor.

21          If the Combined Plan and Disclosure Statement is not confirmed, the Chapter  
22          11 Case may be converted to a case under chapter 7 of the Bankruptcy Code, pursuant  
23          to which a trustee would be elected or appointed to liquidate and distribute the  
24          Debtor's remaining assets in accordance with the priorities established by the  
25          Bankruptcy Code. As discussed above and indicated in the Liquidation Analysis, the  
26          Plan Proponents believe that the Combined Plan and Disclosure Statement provides a  
          better outcome for holders of Claims than a chapter 7 liquidation would provide.

27          If the Combined Plan and Disclosure Statement is not confirmed, the Chapter  
28          11 Case also could be dismissed. Among other effects, dismissal would result in the

1 termination of the automatic stay, thus permitting creditors to assert state-law rights  
2 and remedies against the Debtor and its assets, likely to the detriment of other  
3 creditors. While it is impossible to predict precisely what would happen in the event  
4 the Chapter 11 Case is dismissed, it is unlikely that dismissal would result in a ratable  
5 distribution of the Debtor's assets among creditors as provided in the Combined Plan  
6 and Disclosure Statement. Thus, the vast majority of creditors could expect to receive  
7 less in the dismissal scenario than they would receive under the Combined Plan and  
8 Disclosure Statement.

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**SECTION 8.**  
**UNCLASSIFIED CLAIMS**

9 In accordance with § 1123(a)(1), the following Claims are not classified and  
10 are excluded from the Classes set forth in Section 9 hereof and shall receive the  
11 treatment discussed below:

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8.1 *Administrative Claims.*

13 Except to the extent that the Debtor (or the Liquidating Trust) and the Holder  
14 of an Allowed Administrative Claim agree to less favorable treatment, a Holder of an  
15 Allowed Administrative Claim (other than a Professional Claim, which shall be  
16 subject to Section 8.2 or Statutory Fees, which shall be subject to Section 8.3) shall  
17 receive, in full satisfaction, settlement, release, and discharge of, and in exchange for,  
18 such Administrative Claim, Cash equal to the unpaid portion of such Allowed  
19 Administrative Claim either (a) on the Effective Date, (b) if the Allowed  
20 Administrative Claim is based on liabilities incurred by the Debtor in the ordinary  
21 course of their businesses after the Petition Date, in the ordinary course of business in  
22 accordance with the terms and conditions of the particular transaction giving rise to  
23 such Allowed Administrative Claim, without any further action by the Holder of such  
24 Allowed Administrative Claim, (c) on such other date as agreed between the Debtor  
25 (or the Post-Effective Date Debtor) and such Holder of an Allowed Administrative  
26 Claim, or (d) to the extent the Allowed Administrative Claim had not yet been  
27 Allowed on the Effective Date, from the Administrative Claims Reserve pursuant to  
28 Section 20.2 hereof.

24 Holders of Administrative Claims (including, without limitation, Professionals  
25 requesting compensation or reimbursement of such expenses pursuant to §§ 327, 328,  
26 330, 331, 503(b), or 1103) that do not file such requests by the applicable deadline  
27 provided for herein may be subject to objection for untimeliness and may be  
28 prohibited by order of the Bankruptcy Court from asserting such claims against the  
Debtor, the Post-Effective Date Debtor, the Estate, the Liquidating Trust, or their



1 successors or assigns, or their property. Any objection to Professional Fee Claims  
2 shall be filed on or before the objection deadline specified in the application for final  
3 compensation or order of the Bankruptcy Court.

#### 4 8.2 *Professional Claims.*

5 All Professionals seeking an award by the Bankruptcy Court of a Professional  
6 Claim (other than the Ordinary Course Professionals) shall file their respective final  
7 applications for allowance of compensation for services rendered and reimbursement  
8 of expenses incurred by the date that is forty-five (45) days after the Effective Date,  
9 and shall receive, in full satisfaction of such Claim, Cash in an amount equal to 100%  
10 of such Allowed Professional Claim promptly after entry of an order of the  
11 Bankruptcy Court allowing such Claim or upon such other terms as may be mutually  
12 agreed-upon between the Holder of such Professional Claim and the Debtor, which  
13 Cash shall be paid out of the Effective Date Professional Claim Reserve. Objections  
14 to any final applications covering Professional Claims must be filed and served on the  
15 Post-Effective Date Debtor, the Liquidating Trustee, and the requesting Professional  
16 no later than ninety (90) days after the Effective Date (unless otherwise agreed by the  
17 requesting Professional).

18 On the Effective Date, or as soon as practicable thereafter, the Liquidating  
19 Trustee shall establish the Effective Date Professional Claim Reserves based upon  
20 estimates of anticipated fees provided by Professionals for services rendered and  
21 expenses incurred prior to the Effective Date, including estimated fees for services  
22 rendered, and actual and necessary costs incurred, in connection with the filing,  
23 service and prosecution of any applications for allowance of Professional Fees  
24 pending on the Effective Date or filed and/or served after the Effective Date. The  
25 Liquidating Trustee shall supplement the Effective Date Professional Claim Reserves  
26 if the amount originally established is insufficient to pay Allowed Professional Fee  
27 Claims.

28 Upon approval of the fee applications by the Bankruptcy Court, the Liquidating  
Trustee shall pay Professionals from the Effective Date Professional Claim Reserves  
all of their respective Allowed Professional Fee Claims.

#### 8.3 *Statutory Fees.*

Statutory Fees shall be paid by the Liquidating Trustee in the ordinary course  
of business until the closing, dismissal or conversion of the Chapter 11 Case to another  
chapter of the Bankruptcy Code. Any unpaid Statutory Fees that accrued before the  
Effective Date shall be paid no later than thirty (30) days after the Effective Date. For  
the avoidance of doubt, if the Chapter 11 Case is reopened, the Liquidating Trustee



1 shall pay any Statutory Fees in the ordinary course of business until the closing,  
2 dismissal, or conversion of the Chapter 11 Case to another chapter of the Bankruptcy  
3 Code.

#### 4 8.4 *Priority Tax Claims.*

5 Except to the extent that a Holder of an Allowed Priority Tax Claim agrees to  
6 less favorable treatment, each Holder of an Allowed Priority Tax Claim shall receive,  
7 in full and final satisfaction of such Allowed Priority Tax Claim, at the option of the  
8 Liquidating Trustee: (a) Cash in an amount equal to such Allowed Priority Tax Claim  
9 on, or as soon thereafter as is reasonably practicable, the later of (i) the Effective Date,  
10 to the extent such Claim is an Allowed Priority Tax Claim on the Effective Date, and  
11 (ii) the first Business Day after the date that is thirty (30) days after the date such  
12 Priority Tax Claim becomes an Allowed Priority Tax Claim; or (b) equal annual Cash  
13 payments in an aggregate amount equal to the amount of such Allowed Priority Tax  
14 Claim, together with interest at the applicable rate pursuant to § 511, over a period  
15 not exceeding five (5) years from and after the Petition Date; *provided, however*, the  
16 Post-Effective Date Debtor and Liquidating Trustee, as applicable, reserve the right  
17 to prepay all or a portion of any such amounts at any time under this option at the  
18 discretion of the Post-Effective Date Debtor and the Liquidating Trustee.

### 15 SECTION 9. 16 **CLASSIFICATION OF CLAIMS AND VOTING**

#### 17 9.1 *Classification in General.*

18 A Claim is placed in a particular Class for all purposes, including voting,  
19 confirmation, and distribution under the Plan and under §§ 1122 and 1123(a)(1);  
20 *provided, that* a Claim is placed in a particular Class for the purpose of receiving  
21 Distributions pursuant to the Plan only to the extent that such Claim is an Allowed  
22 Claim in that Class and such Allowed Claim has not been satisfied, released, or  
23 otherwise settled prior to the Effective Date.

#### 23 9.2 *Summary of Classification.*

24 The following table designates the Classes of Claims against the Debtor and  
25 specifies which of those Classes are (a) not Impaired by the Plan, (b) Impaired by the  
26 Plan, and (c) entitled to vote to accept or reject the Plan in accordance with § 1126.  
27 In accordance with § 1123(a)(1), Administrative Claims, Professional Claims,  
28 Statutory Fees, and Priority Tax Claims, have not been classified. All of the potential  
Classes for the Debtor are set forth herein. If, ultimately, the Debtor does not have

Holders of Claims in a particular Class or Classes, such Classes shall be treated as set forth in Section 9.4.

| Class | Designation              | Impairment   | Entitled to Vote      |
|-------|--------------------------|--------------|-----------------------|
| 1     | Priority Non-Tax Claims  | Not Impaired | No (deemed to accept) |
| 2     | Secured Claims           | Not Impaired | No (deemed to accept) |
| 3     | General Unsecured Claims | Impaired     | Yes                   |
| 4     | Allowed DHCS Claim       | Impaired     | Yes                   |

### 9.3 *Special Provision Governing Unimpaired Claims.*

Except as otherwise provided in the Plan, nothing under the Plan shall affect the rights of the Debtor or the Liquidating Trust with respect to Unimpaired Claims, including all legal and equitable defenses to, or setoffs or recoupments against, any such Unimpaired Claims.

### 9.4 *Elimination of Vacant Classes.*

Any Class of Claims, as of the commencement of the Confirmation Hearing, that does not have at least one (1) Holder of a Claim in an amount greater than zero for voting purposes shall be considered vacant, deemed eliminated from the Plan for purposes of voting to accept or reject the Plan, and disregarded for purposes of determining whether the Plan satisfies § 1129(a)(8) with respect to that Class.

### 9.5 *Voting; Presumptions; Solicitation in Good Faith.*

Only Holders of Allowed Claims in Class 3 and Class 4 are entitled to vote to accept or reject this Plan. Holders of Claims in a Voting Class will receive Ballots containing detailed voting instructions.

The Plan Proponents will solicit votes on the Plan from the Voting Classes in good faith and in compliance with the applicable provisions of the Bankruptcy Code. Accordingly, the Plan Proponents and each of their Related Persons shall be entitled to, and upon the Confirmation Date, will be granted the protections of § 1125(e).

### 9.6 *Cramdown.*

If any Class of Claims is deemed and/or presumed to reject this Plan or is entitled to vote on this Plan and does not vote to accept this Plan, the Plan Proponents intend to (i) seek confirmation of this Plan under § 1129(b), or (ii) amend or modify this Plan in accordance with the terms hereof and the Bankruptcy Code. If a

1 controversy arises as to whether any Claims, or any Class of Claims, are Impaired,  
2 the Bankruptcy Court shall, after notice and a hearing, determine such controversy on  
3 or before the Confirmation Date.

4 **SECTION 10.**  
5 **TREATMENT OF CLAIMS**

6 In full and final satisfaction of all of the Claims against the Debtor (except with  
7 respect to Unclassified Claims that are satisfied in accordance with Section 8 above),  
8 the Claims shall receive the treatment described below. Except to the extent expressly  
9 provided in this Section 10, the timing of Distributions is addressed in Section 11  
hereof.

10 **10.1 *Class 1: Priority Non-Tax Claims.***

11 a) **Classification.** Class 1 consists of Priority Non-Tax Claims.

12 b) **Treatment.** Except to the extent that a Holder of an Priority Non-Tax  
13 Claim agrees to a less favorable treatment of such Claim, each such  
14 Holder shall receive payment in Cash in an amount equal to the  
15 amount of such Allowed Claim, payable on the later of (i) the Effective  
16 Date; and (ii) after the date on which such Priority Non-Tax Claim  
17 becomes an Allowed Priority Non-Tax Claim, in each case, or as soon  
as reasonably practicable thereafter in accordance with the priority  
scheme set forth in the Bankruptcy Code.

18 c) **Voting.** Class 1 is Unimpaired. Holders of Priority Non-Tax Claims  
19 are deemed to have accepted the Plan, pursuant to § 1126(f), and are  
20 not entitled to vote to accept or reject the Plan.

21 **10.2 *Class 2: Secured Claims.***

22 a) **Classification.** Class 2 consists of Secured Claims.

23 b) **Treatment.** The legal, equitable, and contractual rights of Holders of  
24 Allowed Secured Claims are unaltered by the Plan, except as altered pursuant to the  
25 Sale Order, and the Liens of the Holders of the Secured Claims will continue to attach  
26 to their respective collateral, provided, that, all such Claims shall remain subject to  
27 any and all defenses, challenges, counterclaims, and setoff or recoupment rights with  
28 respect thereto. Except to the extent that a Holder of an Allowed Secured Claim agrees  
to a less favorable treatment of such Claim, each such Holder shall, at the option of  
the Post-Effective Date Debtor and Liquidating Trustee, as applicable, receive one of

1 the following treatments: (i) the Holder of such Secured Claim shall retain its Lien on  
2 its collateral until such collateral is sold, and the proceeds of such sale, less costs and  
3 expenses of disposing of such collateral, shall be paid to such Holder in full  
4 satisfaction of such Secured Claim; (ii) on or as soon as practicable after the later of  
5 (A) the Effective Date; or (B) the date upon which the Bankruptcy Court enters a Final  
6 Order determining or allowing such Secured Claim, the Holder of such Secured Claim  
7 will receive a Cash payment equal to the amount of its Secured Claim in full and final  
8 satisfaction of such Secured Claim; or (iii) the collateral securing the Secured Claim  
9 shall be abandoned to such Holder, in full and final satisfaction of such Secured  
10 Claim. receive payment in Cash in an amount equal to the amount of such Allowed  
11 Claim.

12 The Bankruptcy Court shall retain jurisdiction and power to determine the  
13 amount necessary to satisfy any Allowed Secured Claim. Upon receipt of Cash in an  
14 amount equal to the amount of such Allowed Secured Claim, the Holder of such  
15 Allowed Secured Claim shall release (by the Confirmation Order shall be deemed to  
16 release) all Liens against any Liquidating Trust Assets.

17 c) **Voting. Class 2 is Unimpaired.** Holders of Secured Claims are  
18 deemed to have accepted the Plan, pursuant to § 1126(f), and are not entitled to vote  
19 to accept or reject the Plan.

20 10.3 ***Class 3: General Unsecured Claims.***

21 a) **Classification.** Class 3 consists of the General Unsecured Claims  
22 against the Debtor.

23 b) **Treatment.** As soon as practicable after the Effective Date, each  
24 Holder of an Allowed General Unsecured Claim shall receive in full satisfaction,  
25 settlement, discharge, and release of, and in exchange for such Allowed General  
26 Unsecured Claim, its Pro Rata share of the Class A Trust Beneficial Interests.

27 c) **Voting. Class 3 is Impaired.** Holders of General Unsecured Claims  
28 are entitled to vote to accept or reject the Plan.

10.4 ***Class 4: Allowed DHCS Claim.***

a) **Classification.** Class 4 consists of the Allowed DHCS Claim.

b) **Treatment.** As soon as practicable after the Effective Date, DHCS as  
holder of the Allowed DHCS Claim, shall receive in full satisfaction, settlement,  
discharge, and release of, and in exchange for, such Allowed DHCS Claim: (i) the  
application of the DHCS Allowed Offset Amount to the Allowed DHCS Claim by

DHCS; (ii) distribution of the DHCS Sales Proceeds Recovery by the Liquidating Trustee; and (iii) distribution of its Pro Rata share of the Class B Trust Beneficial Interests.

c) **Voting. Class 4 is Impaired.** The Holder of the DHCS Claim is entitled to vote to accept or reject the Plan.

## **SECTION 11.** **DISTRIBUTIONS**

11.1 ***Party Responsible for Making Distributions.*** Subject to the prior payment of the amounts required to be paid by the Debtor in Cash on the Effective Date pursuant to this Plan, all Plan Distributions shall be made by the Liquidating Trustee (or by the Disbursing Agent, to the extent directed by the Liquidating Trustee), or, with respect to Distributions made to Holders of Class A Trust Beneficial Interests, by the Co-Liquidating Trustee (or by the Disbursing Agent, to the extent directed by the Co-Liquidating Trustee).

Neither the Liquidating Trustee nor the Co-Liquidating Trustee shall be required to give any bond or surety or other security for the performance of their duties unless otherwise ordered by the Bankruptcy Court. The Liquidating Trustee, Co-Liquidating Trustee, or Disbursing Agent, as applicable, shall be empowered to (a) effect all actions and execute all agreements, instruments, and other documents necessary to perform their duties under the Plan; (b) make all Distributions contemplated hereby; (c) employ transfer agents and registrars to represent them with respect to their responsibilities; and (d) exercise such other powers as may be vested in the Liquidating Trustee or Co-Liquidating Trustee by order of the Bankruptcy Court, pursuant to the Plan, the Liquidating Trust Agreement, or as deemed by the Liquidating Trustee or the Co-Liquidating Trustee, applicable, to be necessary and proper to implement the provisions hereof.

11.2 ***Appointment of Disbursing Agent.*** A Disbursing Agent may be appointed either pursuant to the Confirmation Order or by the Liquidating Trustee.

### ***11.3 Timing of Distributions.***

a) Distributions on Account of All Claims Other Than the DHCS Claim. Subject to Section 11.1 of this Plan, on the Effective Date (or if a Claim is not an Allowed Claim on the Effective Date, on the date that such Claim becomes an Allowed Claim), or as soon as reasonably practicable thereafter, each Holder of an Allowed Claim (except for the Allowed DHCS Claim) against the Debtor shall receive full amount of the Distributions that the Plan provides for Allowed Claims in



1 the applicable Class and in the manner provided herein. If and to the extent there are  
2 Disputed Claims, Distributions on account of any such Disputed Claims shall be made  
3 pursuant to the provisions provided in the Plan. Except as otherwise provided in the  
4 Plan, Holders of Claims shall not be entitled to interest, dividends, or accruals on the  
5 Distributions provided for therein, regardless of whether Distributions are delivered  
6 on or at any time after the Effective Date.

7 Upon the Effective Date, all debts of the Debtor shall be deemed fixed and  
8 adjusted pursuant to the Plan and the Debtor and the Liquidating Trust shall have no  
9 liability on account of any Claims except as set forth in the Plan and in the  
10 Confirmation Order. All payments and all Distributions made by the Liquidating  
11 Trustee, the Co-Liquidating Trustee, or the Disbursing Agent under the Plan shall be  
12 in full and final satisfaction, settlement, and release of all Claims against the Debtor.

13 b) Distributions on Account of the Allowed DHCS Claim.  
14 Distributions on account of the Allowed DHCS Claim shall be made in accordance  
15 with Section 10.4 hereof, provided, however, that Distributions on account of the  
16 Allowed DHCS Balance Claim (i.e., to the Holder of Class B Trust Beneficial  
17 Interests) need not be made to the extent there is no Cash in the Trust Assets Accounts  
18 to distribute.

19 **11.4 Manner of Cash Payments Under the Plan and Liquidating Trust**  
20 **Agreement.**

21 Cash payments made pursuant to the Plan and Liquidating Trust Agreement,  
22 shall be in United States dollars by checks drawn on a domestic bank selected by the  
23 Liquidating Trustee, Co-Liquidating Trustee, or Disbursing Agent, as applicable, or  
24 by wire or ACH transfer from a domestic bank, at the option of the Liquidating  
25 Trustee, Co-Liquidating Trustee, or Disbursing Agent, as applicable.

26 **11.5 Distribution Procedures.**

27 a) **Distribution Dates.** The Liquidating Trustee and Co-Liquidating  
28 Trustee, as applicable, shall make Distributions to Holders of Claims as provided in  
Section 11 of the Plan.

b) **Subsequent Distributions.** Any Distribution not made on the  
Initial Distribution Date or a Subsequent Distribution Date because the Claim relating  
to such Distribution had not been Allowed on that Distribution Date shall be held by  
the Liquidating Trust for Distribution on any Subsequent Distribution Date after such  
Claim is Allowed. No interest shall accrue or be paid on the unpaid amount of any  
Distribution.

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1           c) **Distribution Record Date.** Except as otherwise provided in a  
2 Final Order of the Bankruptcy Court, the transferees of Claims that are transferred  
3 pursuant to Bankruptcy Rule 3001 on or prior to the Distribution Record Date will be  
4 treated as the Holders of those Claims for all purposes, notwithstanding that any  
5 period provided by Bankruptcy Rule 3001 for objecting to the transfer may not have  
6 expired by the Distribution Record Date. Neither the Liquidating Trustee nor the Co-  
7 Liquidating Trustee shall have any obligation to recognize any transfer of any Claim  
8 occurring after the Distribution Record Date. In making any Distribution with respect  
9 to any Claim, the Liquidating Trustee and Co-Liquidating Trustee shall be entitled  
10 instead to recognize and deal with, for all purposes hereunder, only the Entity that is  
11 listed on the proof of claim filed with respect thereto or on the Schedules as the Holder  
12 thereof as of the close of business on the Distribution Record Date and upon such  
13 other evidence or record of transfer or assignment that is known to the Liquidating  
14 Trustee or Co-Liquidating Trustee as of the Distribution Record Date.

15           d) **Time Bar to Cash Payments by Check.** Checks issued by the  
16 Liquidating Trustee or Co-Liquidating Trustee, as applicable, on account of Allowed  
17 Claims shall be null and void if not negotiated within ninety (90) days after the date  
18 of issuance thereof. Requests for the reissuance of any check that becomes null and  
19 void pursuant to this Article shall be made directly to the Liquidating Trustee or Co-  
20 Liquidating Trustee, as applicable, by the Holder of the Allowed Claim to which the  
21 check was originally issued. Any Claim in respect of such voided check shall be made  
22 in writing on or before the later of six months from the Effective Date or 30 days after  
23 the date on which such check is voided. After that date, all Claims in respect of voided  
24 checks shall be disallowed and forever barred and the proceeds of those checks shall  
25 revert in and become the property of the Liquidating Trust as unclaimed property in  
26 accordance with § 347(b).

27           11.6 **Withholding of Distributions.** In connection with making Distributions  
28 under this Plan, to the extent applicable, the Liquidating Trustee and Co-Liquidating  
Trustee shall comply with all tax withholding and reporting requirements imposed on  
them by any Governmental Unit, and all Distributions pursuant to this Plan shall be  
subject to such withholding and all related agreements shall be subject to any  
applicable withholding and reporting requirements. The Liquidating Trustee or Co-  
Liquidating Trustee, as applicable, may withhold the entire Distribution to any Holder  
of an Allowed Claim until such time as such Holder provides the necessary  
information to comply with any withholding requirements of any Governmental Unit.  
Any property so withheld will then be paid by the Liquidating Trustee or the Co-  
Liquidating Trustee, as applicable, to the appropriate authority. If the Holder of an  
Allowed Claim fails to provide the information to comply with any withholding  
requirements of any Governmental Unit within three months after the date of first

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1 notification to the Holder of the need for such information for the Cash necessary to  
2 comply with any applicable withholding requirements, then such Holders'  
3 Distribution shall be treated in accordance with Section 11.6 of the Plan.

4 **11.7 *Delivery of Distributions and Undeliverable Distributions.*** Subject to  
5 Bankruptcy Rule 9010 and except as otherwise provided herein, Distributions to the  
6 Holders of Allowed Claims shall be made by the Liquidating Trustee or Co-  
7 Liquidating Trustee, as applicable, at (a) the address of each Claimant as set forth in  
8 the Schedules, unless superseded by the address set forth on proof(s) of claim filed by  
9 such Claimant, or (b) the last known address of such Claimant if no proof of claim is  
10 filed or the Debtor, Post-Effective Date Debtor, Liquidating Trustee, or Co-  
11 Liquidating Trustee has been notified in writing of a change of address. If any  
12 Distribution is returned as undeliverable, the Liquidating Trustee or Co-Liquidating  
13 Trustee may, in its discretion, make reasonable efforts to determine the current  
14 address of the Holder of the Claim with respect to which the Distribution was made  
15 as the Liquidating Trustee or Co-Liquidating Trustee deems appropriate, but no  
16 Distribution to any such Holder shall be made unless and until the Liquidating Trustee  
17 or Co-Liquidating Trustee has determined the then-current address of such Holder, at  
18 which time the Distribution to such Holder shall be made without interest. Amounts  
19 in respect of any undeliverable Distributions shall be returned to, and held in trust by,  
20 the Liquidating Trustee or Co-Liquidating Trustee until the Distributions are claimed  
21 or are deemed to be unclaimed property under § 347(b), as set forth in Section 11.7  
22 of the Plan. The Liquidating Trustee or Co-Liquidating Trustee shall have the  
23 discretion to determine how to make Distributions in the most efficient and cost-  
24 effective manner possible; provided, however, that its discretion may not be exercised  
25 in a manner inconsistent with any express requirements of the Plan or Liquidating  
26 Trust Agreement.

27 Except with respect to property not distributed because it is being held in the  
28 Disputed Claim Reserve, Distributions that are not claimed by the later of ninety (90)  
days from the Effective Date or ninety (90) days after the date of a Distribution shall  
be deemed to be unclaimed property under § 347(b) and shall vest or revest in the  
Liquidating Trust, and the Claims with respect to which those Distributions are made  
shall be automatically cancelled. Nothing contained in the Plan shall require the  
Debtor or the Liquidating Trust to attempt to locate any Holder of an Allowed Claim.  
All funds or other property that vest or revest in the Liquidating Trust pursuant to this  
Section shall be distributed to the other Holders of Allowed Claims in accordance  
with the provisions of the Plan and the Liquidating Trust Agreement.

**11.8 *Setoffs and Recoupments.*** The Liquidating Trustee or Co-Liquidating  
Trustee may, to the extent permitted under applicable law, setoff or recoup against

1 any Allowed Claim and any distributions to be made pursuant to the Plan on account  
2 of such Allowed Claim, the claims, rights, and Causes of Action of any nature that  
3 the Debtor or the Liquidating Trust may hold against the Holder of such Allowed  
4 Claim that are not otherwise waived, released, or compromised in accordance with  
5 the Plan; *provided, however*, that neither such a setoff, recoupment, nor the allowance  
6 of any Claim hereunder shall constitute a waiver or release by the Liquidating Trustee  
7 or Co-Liquidating Trustee of any such claims, rights, and Causes of Action that the  
8 Debtor or the Liquidating Trust possesses against such Holder; *provided, further*, that  
9 neither the failure to effect such a setoff or recoupment nor the allowance of any Claim  
10 hereunder shall constitute a waiver or release by the Liquidating Trustee or the Co-  
11 Liquidating Trustee of any such Claims, rights, or Causes of Action that the Debtor,  
12 the Estate, or the Liquidating Trust possess against such Holder. Any Holder of an  
13 Allowed Claim subject to such setoff or recoupment reserves the right to challenge  
14 any such setoff or recoupment in the Bankruptcy Court or any other court with  
15 jurisdiction with respect to such challenge.

11.9 ***De Minimis Distributions.*** No Distribution is required to be made to a  
12 Holder of an Allowed Claim if the amount of Cash to be distributed on any  
13 Distribution Date under the Plan on account of such Claim is \$50 or less. Any Holder  
14 of an Allowed Claim on account of which the amount of Cash to be distributed is \$50  
15 or less will have its Claim for such Distribution discharged and will be forever barred  
16 from asserting any such Claim against each Released Party, the Post-Effective Date  
17 Debtor, the Liquidating Trustee, the Co-Liquidating Trustee, and the Liquidating  
18 Trust. Any Cash not distributed pursuant to this Section will, in the Liquidating  
19 Trustee's discretion, be included in the Trust Assets Accounts, free of any restrictions  
20 thereon, and will be distributed in accordance with the Plan.

11.10 ***Allocation of Plan Distribution Between Principal and Interest.*** All  
21 Distributions by the Liquidating Trustee with respect to any Allowed Claim shall be  
22 allocated first to the principal amount of such Allowed Claim, as determined for  
23 federal income tax purposes, and thereafter, to the remaining portion of such Allowed  
24 Claim (including the interest portion of the Allowed Claim), if any.

11.11 ***Entry of Final Decree in Chapter 11 Case.*** After all the Disputed Claims  
25 have become Allowed Claims or have been disallowed by Final Order, and all  
26 Distributions in respect of Allowed Claims have been made in accordance with this  
27 Plan, or at such earlier time as the Liquidating Trustee deems appropriate, the  
28 Liquidating Trustee (i) shall seek authority from the Bankruptcy Court for entry of  
the Final Decree closing the Chapter 11 Case in accordance with the Bankruptcy Code  
and the Bankruptcy Rules and (ii) shall be authorized under the Plan to take any  
necessary corporate action with respect to the Debtor's continued existence without

1 the necessity for approvals or notices under any applicable state or other law,  
2 including under the Nonprofit Laws. Notwithstanding the foregoing, actions with  
3 respect to the Post-Effective Date Debtor shall be taken by the Liquidating Trustee.  
4 The entry of Final Decree closing this Chapter 11 Case shall not affect the Nonprofit  
5 Status of the Post-Effective Date Debtor to the extent it has not dissolved in  
6 accordance with the Plan.

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8 11.12 ***Distribution Cap.*** In no event shall any Holder of an Allowed Claim  
9 receive Distribution(s) of an aggregate value exceeding one hundred percent (100%)  
10 of the amount of such Holder's Allowed Claim.

11 11.13 ***Distributions Free and Clear.*** Except as otherwise provided herein, any  
12 Distributions under the Plan shall be free and clear of any Liens, Claims, and  
13 encumbrances, and no Entity, including the Debtor, shall have any interest (legal,  
14 beneficial, or otherwise) in any property of the Estate distributed pursuant to the Plan.

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**SECTION 12.**  
**PROCEDURES FOR RESOLVING CONTINGENT,  
UNLIQUIDATED, AND DISPUTED CLAIMS**

12.1 ***No Distributions Pending Allowance.***

Notwithstanding any other provision of the Plan, the Debtor, the Liquidating  
Trustee or the Co-Liquidating Trustee, as applicable, shall not distribute any Cash or  
other property on account of any Disputed Claim unless and until such Claim becomes  
Allowed. Nothing contained herein, however, shall be construed to prohibit or require  
payment or Distribution on account of any undisputed portion of a Claim.

12.2 ***Resolution of Disputed Claims.***

a) **General Unsecured Claims.** From and after the Confirmation Date, all  
objections with respect to Disputed General Unsecured Claims shall be litigated to a  
Final Order by the Co-Liquidating Trustee, (i) except to the extent that the Co-  
Liquidating Trustee elects to withdraw any such objection or the Co-Liquidating  
Trustee and the Claimant elects to compromise, settle, or otherwise resolve any such  
objection, in which event they may settle, compromise or otherwise resolve any  
Disputed General Unsecured Claim without approval of the Bankruptcy Court; or (ii)  
as otherwise provided in the Liquidating Trust Agreement. The costs of pursuing  
objections to General Unsecured Claims shall be borne by the Liquidating Trust.

b) **Other Claims.** From and after the Confirmation Date, all objections with  
respect to Disputed Claims (other than Disputed General Unsecured Claims) shall be  
litigated to a Final Order by the Liquidating Trustee, except to the extent the



1 Liquidating Trustee elects to withdraw any such objection or the Liquidating Trustee  
2 and the Claimant elect to compromise, settle, or otherwise resolve any such objection,  
3 in which event they may settle, compromise, or otherwise resolve any Disputed Claim  
4 (other than Disputed General Unsecured Claims) without approval of the Bankruptcy  
5 Court. The costs of pursuing the objections to Claims (other than General Unsecured  
6 Claims) shall be borne by the Liquidating Trust.

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8 12.3 **Objection Deadline.** All objections to Claims shall be filed and served  
9 upon the Claimant not later than the Claims Objection Deadline, as such may be  
10 extended by order of the Bankruptcy Court.

11 12.4 **Allowance and Estimation of Claims.** Following the date on which a  
12 Disputed Claim becomes an Allowed Claim after the Distribution Date, the  
13 Liquidating Trustee or Co-Liquidating Trustee, as applicable, shall pay directly to the  
14 Holder of such Allowed Claim, as soon as reasonably practicable, the amount  
15 provided for under the Plan, as applicable, and in accordance therewith.

16 a) **Allowance of Claims.** Notwithstanding anything to the contrary  
17 herein, after the Effective Date and subject to the other provisions of the Plan, the  
18 Liquidating Trustee or Co-Liquidating Trustee, as applicable, will have and will retain  
19 any and all rights and defenses under bankruptcy or nonbankruptcy law that the  
20 Debtor or its Estate had with respect to any Claim immediately before the Effective  
21 Date, except with respect to any Claim deemed Allowed under the Plan or by orders  
22 of the Bankruptcy Court. Except as expressly provided in the Plan or in any order  
23 entered in the Chapter 11 Case prior to the Effective Date (including the Confirmation  
24 Order), no Claim will become an Allowed Claim unless and until such Claim is  
25 deemed Allowed under the Plan or the Bankruptcy Code, or the Bankruptcy Court has  
26 entered a Final Order, including the Confirmation Order, in the Chapter 11 Case  
27 allowing such Claim.

28 b) **Prosecution of Objections to Claims.** From and after the  
Effective Date, unless otherwise provided in the Plan, the Confirmation Order, or the  
Liquidating Trust Agreement, (i) the Liquidating Trustee will have the sole authority  
to file objections to Claims (other than General Unsecured Claims) and settle,  
compromise, withdraw, or litigate to judgment objections to any and all Claims (other  
than General Unsecured Claims), regardless of whether such Claims are in an  
Unimpaired Class or otherwise; and (ii) the Co-Liquidating Trustee will have the sole  
authority to file objections to general Unsecured Claims and settle, compromise,  
withdraw, or litigate to judgment objections to any and all General Unsecured Claims.  
From and after the Effective Date, the Liquidating Trustee may settle or compromise  
any Disputed Claim without any further notice to or action, order, or approval of the  
Bankruptcy Court. The Liquidating Trustee will have the sole authority to administer

1 and adjust the Claims Register to reflect any such settlements or compromises without  
2 any further notice to or action, order, or approval of the Bankruptcy Court; provided,  
3 however, that with respect to General Unsecured Claims, the Co-Liquidating Trustee  
4 shall have the sole authority to administer and adjust the Claims Register to reflect  
5 any compromises or settlements of General Unsecured Claims without any further  
6 notice to or action, order, or approval of the Bankruptcy Court.

7           c) **Estimation of Claims.** At any time, (a) prior to the Effective Date,  
8 the Debtor, and (b) after the Effective Date, the Liquidating Trustee or, solely with  
9 respect to General Unsecured Claims, the Co-Liquidating Trustee may request that  
10 the Bankruptcy Court estimate any contingent or unliquidated Claim to the extent  
11 permitted by § 502(c) regardless of whether the Debtor or the Liquidating Trust has  
12 previously objected to such Claim or whether the Bankruptcy Court has ruled on any  
13 such objection, and the Bankruptcy Court shall have jurisdiction to estimate any  
14 Claim at any time to any such objection. If the Bankruptcy Court estimates any  
15 contingent or unliquidated Claim, that estimated amount shall constitute either the  
16 Allowed amount of such Claim or a maximum limitation on the Claim, as determined  
17 by the Bankruptcy Court. If the estimated amount constitutes a maximum limitation  
18 on the Claim, the Liquidating Trustee or Co-Liquidating Trustee, as applicable, may  
19 elect to pursue supplemental proceedings to object to the ultimate allowance of the  
20 Claim.

#### 12.5 *Disallowance of Claims.*

21           a) Except as otherwise agreed, any and all proofs of claim filed after  
22 the Bar Date are Disputed, and Holders of such Claims will not receive any  
23 Distributions thereon unless and until such Claim is Allowed.

24           b) Subject to and in accordance with this Plan, any Claims held by  
25 Entities from which property is recoverable under §§ 542, 543, 550, or 553 or Entities  
26 that are transferees of transfers avoidable under §§ 522(f), 522(h), 544, 545, 547, 548,  
27 549, or 724(a), provided, that, such Cause of Action is retained by the Liquidating  
28 Trust, shall be deemed disallowed pursuant to § 502(d), and Holders of such Claims  
may not receive any Distributions on account of such Claims until such time as such  
Causes of Action the Debtor holds or may hold against any Entity have been resolved  
or a Bankruptcy Court order with respect thereto has been entered and all sums due,  
if any, to the Estate by that Entity have been turned over or paid to the Debtor or  
Liquidating Trust.

12.6 *Adjustment Without Objection.* Any Claim that has been paid or  
satisfied, or any Claim that has been amended or superseded, may be adjusted or  
expunged from the claims register at the direction of the Debtor, the Liquidating

1 Trustee, or the Co-Liquidating Trustee, as applicable, without an objection filed and  
2 without further notice to or action, order, or approval of the Bankruptcy Court.

3 **12.7 Reserve Provisions for Disputed Claims.**

4 a) **Establishment of Disputed Reserves.** On or prior to each  
5 Distribution Date, the Liquidating Trustee shall each reserve Cash required for  
6 Distribution on Disputed Claims as if such Claims were Allowed as filed with any  
7 Disputed Claims that are unliquidated or contingent being reserved in an amount  
8 reasonably determined by the Liquidating Trustee, as applicable (the “Disputed Claim  
9 Reserve”). On each Distribution Date after the Effective Date in which the  
10 Liquidating Trustee or Co-Liquidating Trustee makes Distributions to Holders of  
11 Allowed Claims, the Liquidating Trustee shall retain on account of Disputed Claims  
12 an amount the Liquidating Trustee estimates would be necessary to fund the Pro Rata  
Share of such Distributions to Holders of Disputed Claims is such Claims were  
Allowed, with any Disputed Claims that are unliquidated or contingent being reserved  
in an amount reasonably determined by the Liquidating Trustee or Co-Liquidating  
Trustee, as applicable.

13 b) **Maintenance of Disputed Reserves.** The Liquidating Trustee  
14 shall hold property in the Disputed Claim Reserve in trust for the benefit of the  
15 Holders of the applicable Disputed Claims that are ultimately determined to be  
16 Allowed. The Disputed Claim Reserve shall be closed (or deemed closed) by the  
17 Liquidating Trust when all Distributions and other dispositions of Cash of other  
18 property required to be made hereunder will have been made in accordance with the  
19 terms of the Plan. Upon closure of the Disputed Claim Reserve, all Cash or other  
property held in that Disputed Claim Reserve shall revert in and become unrestricted  
property of the Liquidating Trust to be distributed in accordance with the Plan and the  
Liquidating Trust Agreement.

20 c) **Limitation on Funding Disputed Claim Reserves.** Except as  
21 expressly set forth in the Plan, neither the Debtor nor the Liquidating Trustee shall  
22 have any duty to fund the Disputed Claim Reserve except from the Liquidating Trust  
23 Assets.

24 **12.8 Rounding.** Whenever any payment of a fraction of a cent would  
25 otherwise be called for, the actual Distribution shall reflect a rounding of such fraction  
down to the nearest cent.

26 **12.9 Cumulative Effect.** All the objection, estimation, and resolution  
27 procedures set forth in this Section are intended to be cumulative (where possible)  
28 and not exclusive of one another.

**SECTION 13.**  
**LIQUIDATING TRUST BENEFICIARIES**

13.1 *Identification of Liquidating Trust Beneficiaries.* Each of the Liquidating Trust Beneficiaries shall be recorded and set forth in a schedule maintained by the Liquidating Trustee expressly for such purpose based upon its Allowed Claim in Class 3 or Class 4.

13.2 *Beneficial Interests Only.* The ownership of Trust Beneficial Interests shall not entitle any Trust Beneficiary to any title in or to the Liquidating Trust Assets or to any right to call for a partition or division of such Liquidating Trust Assets or to require an accounting, except as may be specifically provided herein.

13.3 *Evidence of Beneficial Interests.* Ownership of a Trust Beneficial Interest (a) shall be noted in the books and records of the Liquidating Trust and (b) shall not be evidenced by any certificate, note, or receipt or in any other form or manner whatsoever, except as maintained on the books and records of the Liquidating Trust by the Liquidating Trustee, including the Schedules.

13.4 *Conflicting Claims.* Except as otherwise provided in the Liquidating Trust Agreement, if any conflicting claims or demands are made or asserted with respect to a Trust Beneficial Interest, the Liquidating Trustee shall be entitled, at its sole election, to refuse to comply with any such conflicting claims or demands. In so refusing, the Liquidating Trustee or Co-Liquidating Trustee, as applicable, may elect to make no payment or Distribution with respect to the beneficial interest represented by the claims or demands involved, or any part thereof, and the Liquidating Trustee or Co-Liquidating Trustee, as applicable, shall refer such conflicting claims or demands to the Bankruptcy Court, which shall have exclusive jurisdiction over resolution of such conflicting claims or demands and file a motion with the Bankruptcy Court to adjudicate any such conflicting claims or demands. In so doing, the Liquidating Trustee or Co-Liquidating Trustee, as applicable, shall not be or become liable to any party for his/her refusal to comply with any of such conflicting claims or demands. The Liquidating Trustee or Co-Liquidating Trustee, as applicable, shall be entitled to refuse to act until either (a) the rights of the adverse claimants have been adjudicated by a Final Order or (b) all differences have been resolved by a written agreement among all of such parties and the Liquidating Trustee or Co-Liquidating Trustee, as applicable, which agreement shall include a complete release of the Liquidating Trust and the Liquidating Trustee (the occurrence of either (a) or (b) being referred to as a “Dispute Resolution” in this Section). Until a Dispute Resolution is reached with respect to such conflicting claims or demands, the Liquidating Trustee or Co-Liquidating Trustee, as applicable, shall hold in a segregated interest-bearing account with a United States financial institution any

1 payments or Distributions from the Liquidating Trust as applicable, to be made with  
2 respect to the Beneficial Interest at issue. Promptly after a Dispute Resolution is  
3 reached, the Liquidating Trustee shall Transfer the payments and Distributions, if any,  
4 held in the segregated account, together with any interest and income generated  
thereon, in accordance with the terms of such Dispute Resolution.

5 13.5 ***Limitation on Transferability.*** As set forth in more detail in the  
6 Liquidating Trust Agreement, the Trust Beneficial Interests may not be transferred,  
7 sold, assigned, hypothecated, or pledged, except as they may be assigned or  
transferred by will, intestate succession, or operation of law.

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9 **SECTION 14.**  
**EXECUTORY AGREEMENTS**

10 14.1 ***General Treatment.*** On the Effective Date, all Executory Agreements to  
11 which the Debtor is a party shall be deemed rejected as of the Effective Date, except  
12 for those Executory Agreements that (a) have been assumed or rejected pursuant to a  
13 Final Order of the Bankruptcy Court (including pursuant to any Sale Order), (b) are  
14 the subject of a separate motion to assume, assume and assign, or reject filed under §  
15 365 on or before the Effective Date, (c) are specifically designated as a contract or  
16 lease to be assumed pursuant to the DAP Sale and no timely objection to the proposed  
17 assumption was filed; or (d) are specifically designated as a contract or lease to be  
18 assumed on the Schedule of Assumed Contracts and no timely objection to the  
19 proposed assumption has been filed. If the party to an Executory Agreement listed to  
20 be assumed in the Schedule of Assumed Contracts wishes to object to the proposed  
21 assumption (including with respect to the cure amounts), it shall do so within thirty  
22 (30) days from the service of the Schedule of Assumed Contracts. However, nothing  
23 in this Section shall cause the rejection, breach, or termination of any contract of  
insurance benefiting the Debtor and the Estate, the Debtor's officers, managers and  
directors and/or the Liquidating Trust. The Confirmation Order shall constitute an  
order of the Bankruptcy Court approving such assumptions and rejections, as  
applicable, pursuant to § 365, as of the Effective Date. Nothing in this Section shall  
be construed as an acknowledgement that a particular contract or agreement is  
executory or is properly characterized as a lease.

24 The non-Debtor parties to any rejected personal property leases shall be  
25 responsible for taking all steps necessary to retrieve the personal property that is the  
26 subject of such executory contracts and leases, and neither the Debtor nor the  
Liquidating Trust shall bear any liability for costs associated with such matters.



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1       14.2 ***Rejection Bar Date.*** Claims arising out of the rejection of an Executory  
2 Agreement pursuant to the Plan must be filed with the Bankruptcy Court (or as  
3 otherwise provided for in the Debtor's notice of rejection) no later than thirty (30)  
4 days after the Effective Date. Any Claims not filed within such time period will be  
5 forever barred from assertion against the Debtor, the Liquidating Trustee, and the  
Liquidating Trust Assets. All such Claims for which Proofs of Claim are timely and  
properly filed and ultimately Allowed will be treated as General Unsecured Claims.

6       14.3 ***Insurance Policies.*** For the avoidance of doubt, the Debtor's rights with  
7 respect to all Insurance Policies under which the Debtor may be an insured beneficiary  
8 or assignee (including all Insurance Policies that may have expired prior to the  
9 Petition Date, all Insurance Policies in existence on the Petition Date, all Insurance  
10 Policies entered into by the Debtor after the Petition Date, and all Insurance Policies  
under which the Debtor holds rights to make, amend, prosecute, and benefit from  
11 claims) shall be Transferred to the Liquidating Trust (including, without limitation,  
12 for the Liquidating Trustee to pursue and prosecute any Causes of Action) on the  
Effective Date, unless any such Insurance Policy is otherwise cancelled by the  
13 Liquidating Trustee in its discretion. Notwithstanding any provision providing for the  
rejection of Executory Agreements, any Insurance Policy that is deemed to be an  
14 Executory Agreement shall neither be rejected nor assumed by operation of this Plan  
and shall be the subject of a specific motion by the Liquidating Trust, which shall  
15 retain the right to assume or reject any such Executory Agreements pursuant to and  
subject to the provisions of § 365 following the Effective Date, with all rights of the  
16 Insurers to object or otherwise contest such assumption or rejection being expressly  
reserved provided, that, the Liquidating Trustee may not reject (a) any extended  
17 reporting period (tail) coverage purchased by the Debtor and (b) any Insurance  
18 Policies assumed by the Debtor pursuant to an order of the Bankruptcy Court.

19       The Confirmation Order shall constitute a determination that no default by the  
20 Debtor exists with respect to any of the Insurance Policies requiring a cure payment  
21 and that nothing in the Sale Order, any underlying agreements or this Plan shall be  
22 construed or applied to modify, impair, or otherwise affect the enforceability of the  
Insurance Policies or any coverage thereunder with regard to any Claims or Causes  
23 of Action.

24       Notwithstanding anything to the contrary in the Confirmation Order or the Plan  
25 (including any other provision that purports to be preemptory or supervening),  
nothing shall in any way operate to impair, or have the effect of impairing the Insurers'  
26 legal, equitable or contractual rights, if any, in respect of any Claims (as defined by §  
101(5)), and the rights of Insurers shall be determined under the Insurance Policies  
27 and under applicable nonbankruptcy law; *provided, that*, any Claim by an Insurer  
28

1 against the Debtor or the Liquidating Trust shall also be determined under applicable  
2 bankruptcy law, and Plan and Confirmation Order provisions.

3 Nothing in the Plan or in the Confirmation Order shall preclude any Person  
4 from asserting in any proceeding any and all Claims, defenses, rights or causes of  
5 action that it has or may have under or in connection with any Insurance Policy, and  
6 nothing in the Plan or the Confirmation Order shall be deemed to waive any claims,  
7 defenses, rights or causes of action that any Person (including any Insurer) has or may  
8 have under the provisions, terms, conditions, defenses and/or exclusions contained in  
9 the subject Insurance Policies; *provided, that*, any Claims by an Insurer against the  
10 Debtor or the Liquidating Trust shall also be determined under applicable bankruptcy  
11 law, and Plan and Confirmation Order provisions. Nothing in this Plan shall diminish,  
12 impair or otherwise affect payments from the proceeds or the enforceability of any  
13 Insurance Policies that may cover (a) Claims by the Debtor, or (b) Claims against the  
14 Debtor or covered Persons.

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**SECTION 15.**  
**MEANS FOR IMPLEMENTATION OF THE PLAN**

15.1 ***General Settlement of Claims.*** The Liquidating Trustee and Co-  
Liquidating Trustee are authorized and directed to make Distributions of the  
distributable Assets pursuant to and in accordance with the Plan. All Plan  
Distributions made to Holders of Allowed Claims in any Class are intended to be and  
shall be final. For the avoidance of doubt, the Plan itself shall not be deemed to be a  
settlement.

15.2 ***Sale Transaction.*** On March 13, 2023, the Bankruptcy Court entered the  
Sale Order authorizing and approving the DAP Sale, pursuant to § 363. Pursuant to  
the DAP Sale, the Debtor sold the Purchased Assets to DAP Health pursuant to the  
terms in the Asset Purchase Agreement.

a) ***Cooperation During Transition Period.*** Between the entry of  
the Sale Order and the Closing of the DAP Sale, the Debtor and DAP Health  
cooperated pursuant to the Management Services Support Agreement. On July 31,  
2023, the DAP Sale Closed and the Management Services Support Agreement  
terminated on its terms and that to the extent the Debtor or DAP Health may have  
claims, rights, or ongoing obligations to each other under the Management Services  
Support Agreement that survive the termination, such claims, rights, or ongoing  
obligations shall cease to exist on the Effective Date, and that the Post-Effective Date  
Debtor shall not inherit any claims, rights, benefits, or Causes of Action arising under,

1 relating to, or in connection with the Asset Purchase Agreement, the Management  
2 Services Support Agreement, or any other agreement relating to the foregoing.

3           b) **No Effect on Sale Order.** Nothing in the Plan is intended to, nor  
4 shall be construed to, alter any of the terms and conditions upon which the DAP Sale  
5 was approved as set forth in the Asset Purchase Agreement. Neither the Plan nor the  
6 Confirmation Order shall limit or otherwise affect any of the Bankruptcy Court's  
7 findings, conclusions, orders, and judgments as set forth in the Sale Order, and insofar  
8 as any of the protections afforded DAP Health by the Sale Order conflict with or  
9 contradict certain terms and conditions in the Plan or any findings, conclusions,  
orders, or judgments in the Confirmation Order, the Sale Order shall govern and  
control with respect to DAP Health.

10           c) **No Claims against DAP Health.** Notwithstanding anything that  
11 may suggest otherwise in the Plan, the Plan Supplement, or any Schedule or Exhibit  
12 to either of the foregoing, or any other document executed in connection with  
13 Confirmation or this Chapter 11 Case, neither the Post-Effective Date Debtor nor any  
14 Holder of any Claim shall have any claim, cause of action, right, or recourse against  
15 DAP Health or the Purchased Assets on account of or in connection with the DAP  
Sale, the Asset Purchase Agreement, the Master Services Support Agreement, or any  
other agreement or document executed in connection with the consummation of the  
DAP Sale.

16           15.3 **DHCS Settlement Agreement.** On March 7, 2023, the Bankruptcy Court  
17 entered the DHCS 9019 Order authorizing and approving the DHCS Settlement  
18 among the Debtor, the Committee, and DHCS, which resolved the various disputes  
19 between the Debtor, the Committee, and DHCS. The DHCS Settlement Agreement  
20 sets forth the treatment of the DHCS Claim and provides for the allocation of the DAP  
21 Sale proceeds among DHCS and Holders of other Allowed Claims. DHCS will apply  
22 the DHCS Offset Amount to the DHCS Claim as set forth in the DHCS Settlement  
23 Agreement. Pursuant to the DHCS Settlement Agreement, the DHCS Claim will be  
24 reduced dollar for dollar by the DHCS' receipt of Specified Litigation Recoveries,  
which will be allocated as set forth therein. Finally, the DHCS Settlement Agreement  
provides for the Extended DHCS Bar Date in order for DHCS to file an additional  
Proof of Claim for Medi-Cal overpayments not included within the DHCS Claim as  
a General Unsecured Claim.

25           Nothing in the Plan is intended to, nor shall be construed to, alter any of the  
26 terms and conditions upon which the DHCS Settlement Agreement was approved as  
27 set forth therein. Neither the Plan nor the Confirmation Order shall limit or otherwise  
28 affect any of the Bankruptcy Court's findings, conclusions, orders, and judgments as  
set forth in the DHCS 9019 Order, and insofar as any of the protections afforded

1 DHCS by the DHCS 9019 Order conflict with or contradict certain terms and  
2 conditions in the Plan or any findings, conclusions, orders, or judgments in the  
3 Confirmation Order, the DHCS 9019 Order shall govern and control with respect to  
DHCS

4 15.4 ***Plan Funding.*** This Plan will be funded from the following sources: (i)  
5 the Remaining Estate Funds; (ii) the Remaining Cash; (iii) Net Cash Proceeds; (iv)  
6 any refunds, deposits, or other monies owing to the Debtor which were not sold to  
7 DAP Health; (v) the Litigation Recoveries; (vi) any other monetary recoveries  
8 obtained by the Debtor prior to the Effective Date; and (vii) any other monetary  
recoveries obtained by the Liquidating Trustee after the Effective Date that do not  
constitute Purchased Assets.

9 15.5 ***Post-Effective Date Governance***.

10 a) ***Post-Effective Date Debtor.***

11 i. **Continued Limited Existence.** On and after the Effective Date,  
12 the Post-Effective Date Debtor shall continue in existence for the  
13 purposes set forth herein, and retain its Nonprofit Status to the  
14 same extent as such status existed immediately prior to the  
15 Petition Date. No party shall take any action to interfere with,  
16 alter, terminate, or otherwise adversely affect the Nonprofit  
17 Status of the Post-Effective Date Debtor. Specifically, the Post-  
18 Effective Date Debtor shall continue in existence (i) to maintain  
19 the Provider Agreements for Medi-Cal and Medicare, and  
20 participate in the Medi-Cal and Medicare programs, until the  
21 CHOW is approved, and (ii) to collect or otherwise liquidate all  
amounts owing under the Provider Agreements until all  
payments due under such agreements have been received by the  
Post-Effective Date Debtor and, if appropriate, Transferred to  
the Liquidating Trust.

22 ii. **No Further Approvals Required.** In performance of its duties  
23 hereunder, the Post-Effective Date Debtor shall have the rights  
24 and powers of a debtor in possession under § 1107, and such  
25 other rights, powers, and duties necessary, appropriate, advisable  
26 or convenient to effectuate the provisions of the Plan. Except to  
27 the extent provided in this Plan or the Confirmation Order, on  
28 and after the Effective Date, the Post-Effective Date Debtor shall  
not be required to obtain any approvals from the Bankruptcy  
Court, any court or Governmental Unit and/or provide any

1 notices under the Nonprofit Laws to implement the terms of the  
2 Plan.

3 iii. **The Post-Effective Date Debtor's Books and Records.** The  
4 Debtor shall Transfer dominion and control over all of its books  
5 and records, in whatever form, manner or media, to the  
6 Liquidating Trustee on or as soon as reasonably practicable after  
7 the Effective Date.

8 iv. **Dissolution.** The Liquidating Trustee will cause the Post-  
9 Effective Date Debtor to be dissolved for all purposes under  
10 applicable non-bankruptcy law after (i) the CHOW is approved  
11 and (ii) the receipt of all payments related to Medi-Cal and  
12 Medicare. The Liquidating Trustee may dissolve the Post-  
13 Effective Date Debtor, earlier than as set forth herein, if it  
14 determines that the continued existence of the Post-Effective  
15 Date Debtor is not necessary to satisfy the foregoing conditions.  
16 Such dissolution shall occur without the necessity for any other  
17 or further actions to be taken by or on behalf of the Post-  
18 Effective Debtor, or payment of any fees, charges, penalties or  
19 other amounts required by applicable non-bankruptcy law;  
20 provided, however, that the Liquidating Trustee may in its  
21 discretion file any certificates of cancellation as may be  
22 appropriate in connection with dissolution of the Post-Effective  
23 Date Debtor.

24 ***b) Post-Effective Date Board of Directors.***

25 i. **Duties and Obligations.** The Post-Effective Date Board of  
26 Directors shall (i) fulfill its duties and obligations under the Post-  
27 Effective Date Debtor's bylaws and state and federal law, and  
28 (ii) oversee the Liquidating Trustee solely in his/her capacity as  
president of the Post-Effective Date Debtor consistent with the  
terms of this Plan.

ii. **Resignation.** Any member of the Post-Effective Date Board of  
Directors may resign at any time upon not less than thirty (30)  
days' written notice to the Liquidating Trustee; provided, that,  
the Liquidating Trustee may waive such notice period.

iii. **Replacement.** Notwithstanding anything in the bylaws to the  
contrary, in the event that a director serving on the Post-Effective



1 Date Board of Directors resigns or is duly removed for cause, or  
2 in the event of the death of any such director or other occurrence  
3 rendering such director incapacitated or unavailable for a period  
4 of thirty (30) consecutive days, a replacement director shall be  
5 designated by the remaining members of the Post-Effective Date  
6 Board of Directors in consultation with the Liquidating Trustee.  
7 If a replacement director cannot be designated pursuant to this  
8 Plan, the Liquidating Trustee may file a motion with the  
9 Bankruptcy Court seeking appointment of a replacement  
10 director.

11 iv. **Termination.** The terms of the Post-Effective Date Board of  
12 Directors shall expire upon the date they are no longer required  
13 under state law as to the Debtor, as applicable.

14 v. **Limitation of Liability of the Post-Effective Date Board of**  
15 **Directors.** The liability of the Post-Effective Date Board of  
16 Directors shall be limited to the maximum extent permitted by  
17 law, including any exculpations under the articles of  
18 incorporation or bylaws of the Post-Effective Date Debtor.

19 vi. **Operating Accounts for the Post-Effective Date Debtor.** On the  
20 Effective Date, or as soon thereafter as is practical and subject to  
21 the prior payment of the amounts required to be paid or reserved  
22 by the Post-Effective Date Debtor in cash on the Effective Date  
23 on account of Claims pursuant to this Plan, the Post-Effective  
24 Date Debtor shall establish and fund deposit accounts to serve as  
25 Operating Accounts for the Post-Effective Date Debtor for use  
26 in accordance with the Wind-down Budget, provided, however,  
27 the Post-Effective Date Debtor may, with the written consent of  
28 the Liquidating Trustee, utilize previously established deposit  
accounts for such purpose. The Liquidating Trustee shall be  
authorized to use the funds in the Operating Accounts as needed  
to preserve, administer, and continue the Operations for the Post-  
Effective Date Debtor, including paying all related costs and  
expenses associated, and collection of any amounts due to the  
Post-Effective Date Debtor under the Transition Services  
Agreement, each in accordance with the Wind-down Budget.  
After the Effective Date, all Cash or other proceeds generated by  
the Purchased Assets solely to the extent required to fund the  
Operating Accounts in accordance with the Wind-down Budget

1 during the Transition Period shall be excluded from the  
2 definition of the Remaining Cash.

3 **15.6 Liquidating Trust.**

4 a) **Formation of the Liquidating Trust.** On the Effective Date, the  
5 Liquidating Trust shall be established pursuant to the Liquidating Trust Agreement  
6 for the purpose of, inter alia, (a) administering the Liquidating Trust Assets including  
7 the Distributions and payments contemplated under the Plan, (b) prosecuting and/or  
8 resolving all Disputed Claims, (c) investigating and pursuing any Causes of Action  
9 the Debtor holds or may hold against any Entity, and (d) making all Distributions to  
10 the Beneficiaries provided for under the Plan. The Liquidating Trust is intended to  
11 qualify as a liquidating trust pursuant to Treas. Reg. § 301.7701-4(d), with no  
12 objective to continue or engage in the conduct of the trade or business, except to the  
13 extent reasonably necessary to, and consistent with, the liquidating purpose of the  
14 Liquidating Trust. Accordingly, the Liquidating Trustee shall, in an expeditious but  
15 orderly manner, make distribution to Holders of Allowed Claims subject to the terms  
16 of this Plan, liquidate and convert to Cash the remaining Liquidating Trust Assets,  
17 and make timely Distributions to the Beneficiaries of the proceeds thereof, and not  
18 unduly prolong the duration of the Liquidating Trust. Neither the Liquidating Trust  
19 nor the Liquidating Trustee or Co-Liquidating Trustee shall be or shall be deemed a  
20 successor-in-interest of the Debtor for any purpose other than as specifically set forth  
21 herein or in the Liquidating Trust Agreement.

22 b) **Funding of the Liquidating Trust.** On the Effective Date, the  
23 Liquidating Trust Assets shall vest automatically in the Liquidating Trust. The Plan  
24 shall be considered a motion pursuant to §§ 105, 363, and 365 for such relief. The  
25 transfer of the Liquidating Trust Assets to the Liquidating Trust shall be made for the  
26 benefit and on behalf of the Liquidating Trust Beneficiaries. The assets comprising  
27 the Liquidating Trust Assets will be treated for tax purposes as being transferred by  
28 the Debtor to the Liquidating Trust Beneficiaries pursuant to the Plan in exchange for  
their Allowed Claims and then by the Liquidating Trust Beneficiaries to the  
Liquidating Trust in exchange for the beneficial interests in the Liquidating Trust. The  
Liquidating Trust Beneficiaries shall be treated as the grantors and owners of the  
Liquidating Trust. Upon the transfer of the Liquidating Trust Assets, the Liquidating  
Trust shall succeed to all of the Debtor's rights, title and interest in the Liquidating  
Trust Assets, and the Debtor will have no further interest in or with respect to the  
Liquidating Trust Assets.

Except to the extent definitive guidance from the IRS or a court of competent  
jurisdiction (including the issuance of applicable Treasury Regulations or the receipt  
by the Liquidating Trustee of a private letter ruling if the Liquidating Trustee so

1 requests one) indicates that such valuation is not necessary to maintain the treatment  
2 of the Liquidating Trust as a liquidating trust for purposes of the Internal Revenue  
3 Code and applicable Treasury Regulations, as soon as possible after the Effective  
4 Date, the Liquidating Trustee shall make a good-faith valuation of the Liquidation  
5 Trust Assets. The valuation shall be used consistently by all parties (including,  
without limitation, the Debtor, the Liquidating Trust, and the Liquidating Trust  
Beneficiaries) for all federal income tax purposes.

6 **15.7 *Appointment of the Liquidating Trustee and Co-Liquidating Trustee.***

7 The Liquidating Trustee shall be selected by the Debtor with the consent of the  
8 Committee, such consent not to be unreasonably withheld. The initial Liquidating  
9 Trustee shall be a representative from Ankura Consulting Group, LLC. The Co-  
10 Liquidating Trustee shall be selected by the Committee with the consent of the  
11 Debtor, such consent not to be unreasonably withheld. The initial Co-Liquidating  
12 Trustee shall be a representative from FTI Consulting, Inc. The Liquidating Trustee  
13 and Co-Liquidating Trustee shall be deemed appointed on the Effective Date, without  
application, notice, hearing or other order of the Bankruptcy Court. The appointment,  
duties, rights, and powers of the Liquidating Trustee and the Co-Liquidating Trustee  
are as set forth in the Liquidating Trust Agreement.

14 **15.8 *Rights and Powers of Liquidating Trustee and Co-Liquidating Trustee.***

15 a) **Liquidating Trustee.** The Liquidating Trustee shall be deemed  
16 the Estate's representative in accordance with § 1123 and shall have all the rights and  
17 powers set forth in the Liquidating Trust Agreement, including, without limitation,  
18 the powers of a trustee under §§ 704 and 1106 and Bankruptcy Rule 2004 to act on  
19 behalf of the Liquidating Trust. Without limiting the foregoing, and except as  
20 provided for below with respect to the Co-Liquidating Trustee, the Liquidating  
21 Trustee will have the right to, among other things, (1) effect all actions and execute  
22 all agreements, instruments and other documents necessary to implement the  
23 provisions of the Plan and the Liquidating Trust Agreement; (2) liquidate the  
24 Liquidating Trust Assets; (3) investigate, prosecute, settle, abandon or compromise  
25 any Causes of Action the Debtor holds or may hold against any Entity; (4) make  
26 Distributions as contemplated hereby, (5) establish and administer any necessary  
27 reserves for Disputed Claims that may be required; (6) object to the Disputed Claims  
28 and prosecute, settle, compromise, withdraw or resolve in any manner approved by  
the Bankruptcy Court such objections; (7) assert or waive any attorney-client privilege  
on behalf of the Debtor and Estate with regard to acts or events during time periods  
prior to the Petition Date; and (8) employ and compensate professionals and other  
agents, including, without limitation, existing Professionals employed by the Debtor  
in accordance with the Liquidating Trust Agreement or the Plan, provided, however,

1 that any such compensation shall be made only out of the Liquidating Trust Assets,  
2 to the extent not inconsistent with the status of the Liquidating Trust as a liquidating  
3 trust within the meaning of Treas. Reg. § 301.7701-4(d) for federal income tax  
4 purposes.

5           **b) Co-Liquidating Trustee.** The Co-Liquidating Trustee shall have  
6 all the rights and powers set forth in the Liquidating Trust Agreement. To ensure  
7 expeditious resolution of any Disputed General Unsecured Claims and distributions  
8 to Holders of Allowed General Unsecured Claims, the Co-Liquidating Trustee will  
9 have the right to, in consultation with the Liquidating Trustee, to: (1) make  
10 Distributions to Holders of Allowed General Unsecured Claims; (2) object to the  
11 Disputed General Unsecured Claims and prosecute (or continue the prosecution of),  
12 settle, compromise, withdraw or resolve in any manner approved by the Bankruptcy  
13 Court such objections; and (3) employ and compensate professionals and other agents,  
14 including, without limitation, existing Professionals employed by the Debtor or  
15 Committee in accordance with the Liquidating Trust Agreement or the Plan, provided,  
16 however, that any such compensation shall be made only out of the Liquidating Trust  
17 Assets. The Co-Liquidating Trustee will resign (by written submission, email being  
18 sufficient to the Liquidating Trustee) upon (i) fully adjudicating all Disputed General  
19 Unsecured Claims except any Disputed General Unsecured Claims against Specified  
20 Litigation Defendants, and (ii) making the Final Distribution to the Holders of General  
21 Unsecured Claims except Specified Litigation Defendants.

22           **15.9 Fees and Expenses.** Subject to payment in full of all Allowed  
23 Administrative Claims, and except as otherwise ordered by the Bankruptcy Court,  
24 expenses incurred by the Liquidating Trust on or after the Effective Date shall be paid  
25 in accordance with the Liquidating Trust Agreement without further order of the  
26 Bankruptcy Court.

27           **15.10 Transfer of Beneficial Interests in the Liquidating Trust.** Liquidating  
28 Trust Interests shall not be transferable except upon death of the interest holder or by  
operation of law. The Liquidating Trust shall not have any obligation to recognize  
any transfer of Claims occurring after the Distribution Record Date.

**15.11 Litigation of Debtor's Causes of Action.** Except as otherwise provided  
in this Plan, all Causes of Action are retained, vested in the Liquidating Trust, and  
preserved pursuant to § 1123(b). From and after the Effective Date, all Causes of  
Action will be prosecuted or settled by the Liquidating Trustee. Except as otherwise  
provided in this Plan, to the extent any Causes of Action are already pending on the  
Effective Date, the Liquidating Trustee, as successor to the Debtor (in any derivative  
capacity or as an intervening party), will continue the prosecution of such Causes of  
Action and shall be substituted as plaintiff, defendant, or in any other capacity for the

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1 Debtor pursuant to this Plan and the Confirmation Order on the Effective Date without  
2 need for any further motion practice or notice in any case, action, or matter.

3       **15.12 Full and Final Satisfaction.** Commencing upon the Effective Date,  
4 subject to the terms of this Plan and the Liquidating Trust Agreement, the Liquidating  
5 Trustee and Co-Liquidating Trustee, as applicable, shall be authorized and directed to  
6 distribute the amounts required under the Plan to the Holders of Allowed Claims  
7 according to the provisions of the Plan. Upon the Effective Date, all Debts of the  
8 Debtor shall be deemed fixed and adjusted pursuant to this Plan, and the Liquidating  
9 Trust shall have no liability on account of any Claims except as set forth in this Plan  
10 and in the Liquidating Trust Agreement. All payments and all distributions made by  
11 the Liquidating Trustee or Co-Liquidating Trustee under the Plan shall be in full and  
12 final satisfaction of all Claims against the Liquidating Trust; provided, however, that  
13 nothing contained in this Article 9 of the Plan, or in any other provision of this Plan,  
14 shall be deemed to constitute or result in a discharge of the Debtor under § 1141(d).

15       **15.13 Employment and Compensation of Professionals.** In accordance with  
16 the Liquidating Trust Agreement, the Liquidating Trust may employ such counsel,  
17 advisors, and other professionals selected by the Liquidating Trustee or Co-  
18 Liquidating Trustee (which may be the same professionals employed by the Post-  
19 Effective Date Debtor or the Committee) that the Liquidating Trustee and Co-  
20 Liquidating Trustee reasonably require to perform its responsibilities under the Plan  
21 without further order from the Bankruptcy Court.

22       **15.14 No Further Court Authorization.** Except as provided herein or the  
23 Confirmation Order, the Liquidating Trustee and Co-Liquidating Trustee will  
24 continue the orderly administration of the Liquidating Trust Assets and otherwise  
25 implement the provisions of this Plan without necessity of any further order of the  
26 Bankruptcy Court or approval or consent of any Governmental Unit, including under  
27 the Nonprofit Laws. Further, except as provided herein or the Confirmation Order,  
28 the Liquidating Trustee and Co-Liquidating Trustee will continue their oversight and  
related responsibilities pursuant to the Plan and Liquidating Trust Agreement without  
necessity of any further order of the Bankruptcy Court or other Governmental Unit,  
including under the Nonprofit Laws.

1       **15.15 Dissolution of the Committee.** On the Effective Date, the Committee  
will dissolve, and the members of the Committee and the Committee's Professionals  
will cease to have any role arising from or relating to the Chapter 11 Case, except in  
connection with final fee applications of Professionals for services rendered prior to  
the Effective Date (including the right to object thereto). The Professionals retained  
by the Committee and the members thereof will not be entitled to assert any fee claims  
for any services rendered to the Committee or expenses incurred in the service of the



1 Committee after the Effective Date, except for reasonable fees for services rendered,  
2 and actual and necessary costs incurred, in connection with any applications for  
3 allowance of Professional Fees pending on the Effective Date or filed and served after  
4 the Effective Date. Nothing in the Plan shall prohibit or limit the ability of the  
5 Debtor's or Committee's Professionals to represent the Liquidating Trustee or to be  
6 compensated or reimbursed per the Plan and the Liquidating Trust Agreement in  
7 connection with such representation.

8 **15.16 *Coordination Between Post-Effective Date Debtor and the Liquidating***  
9 ***Trust.*** Notwithstanding anything herein to the contrary, in furtherance of the purposes  
10 of the Liquidating Trust, at the request of the Liquidating Trustee or Co-Liquidating  
11 Trustee, as applicable, the Post-Effective Date Debtor (including, without limitation,  
12 the Post-Effective Date Debtor's employees, agents and/or professionals) shall be  
13 authorized to provide assistance and services to, or otherwise act on behalf of, the  
14 Liquidating Trustee or Co-Liquidating Trustee, as applicable, in the performance of  
15 the Liquidating Trustee's or Co-Liquidating Trustee's duties, as applicable, under the  
16 Plan and the Liquidating Trust. Without limitation on the foregoing, the Post-  
17 Effective Date Debtor shall be authorized to assist in the reconciliation and  
18 administration of Claims, and assist in the liquidation and/or collection of Liquidating  
19 Trust Assets (including, without limitation, litigation claims). The Liquidating  
20 Trustee shall oversee all such services provided on behalf of the Liquidating Trust.

21 **15.17 *Destruction and Abandonment of Books and Records.*** Except as  
22 otherwise provided in this subsection or the Liquidating Trust Agreement, on or after  
23 the Effective Date, pursuant to § 554(a), the Liquidating Trustee is authorized, from  
24 time to time, without further application to the Bankruptcy Court or notice to any  
25 party, to abandon or otherwise destroy documents and records (whether in electronic  
26 or paper format) that he or she determines, in his/her reasonable business judgment,  
27 are no longer necessary to the administration of either the Chapter 11 Case or the Plan,  
28 notwithstanding any federal, state, or local law or requirement requiring the retention  
of the applicable documents or records; provided, that, sixty (60) days prior to any  
abandonment or destruction, the Liquidating Trustee will give notice to any Insurer  
requesting notice prior to the Confirmation Date and a general description of the  
documents to be abandoned or destroyed, and the Insurer shall have thirty (30) days  
thereafter to request, at its sole expense, copies of the documents relevant to the  
defense or indemnity claims covered by that Insurer. The Insurer and the Liquidating

1 Trustee shall cooperate in limiting the request to documents relevant to defense or  
2 indemnity of claims covered by that Insurer.

3 15.18 ***Mutuality Preserved.*** Unless specifically agreed in writing by the  
4 Debtor, the Liquidating Trustee, or Co-Liquidating Trustee, as applicable, nothing in  
5 the Plan constitutes a waiver of the requirements for setoff under § 553.

6 **SECTION 16.**  
7 **EFFECT OF CONFIRMATION**

8 16.1 ***Binding Effect of the Plan.*** The provisions of the confirmed Plan shall  
9 bind the Debtor, the Liquidating Trust, the Liquidating Trustee, the Co-Liquidating  
10 Trustee, any Entity acquiring property under the Plan, any Beneficiary, and any  
11 Creditor, whether or not such Creditor has filed a Proof of Claim in the Chapter 11  
12 Case, whether or not the Claim of such Creditor is impaired under the Plan, and  
13 whether or not such Creditor has accepted or rejected the Plan. All Claims and Debts  
14 shall be fixed and adjusted pursuant to the Plan. The Plan shall also bind any taxing  
15 authority, recorder of deeds, or similar official for any county, state, or Governmental  
16 Unit or parish in which any instrument related to under the Plan or related to any  
17 transaction contemplated under the Plan is to be recorded with respect to any taxes of  
18 the kind specified in § 1146(a).

19 16.2 ***Vesting of Assets.*** Upon the Effective Date, title to all property of the  
20 Estate of the Debtor in the Chapter 11 Case shall vest in the Liquidating Trust and  
21 shall be retained by the Liquidating Trust for the purposes contemplated under this  
22 Plan pursuant to the Liquidating Trust Agreement. Without limiting the generality of  
23 the foregoing, all Causes of Action the Debtor holds or may hold against any Entity,  
24 recoveries from any Causes of Action, and all resulting Liquidating Trust Assets shall  
25 vest in the Liquidating Trust upon the Effective Date and shall no longer constitute  
26 property of the Estate.

27 16.3 ***No Discharge. Pursuant to § 1141(d), the Debtor will not receive a***  
28 ***discharge under this Plan.***

16.5 ***Property Free and Clear.*** Except as otherwise provided in the Plan or  
the Confirmation Order, all property that shall vest in the Liquidating Trust shall be  
free and clear of all Claims, Liens, charges, or other encumbrances of Creditors, and  
in relevant documents, agreements, and instruments contained in the Plan  
Supplement. Following the Effective Date, the Liquidating Trustee may Transfer and  
dispose of any such property free of any restrictions imposed by the Bankruptcy Code  
or the Bankruptcy Rules and without further approval of the Bankruptcy Court or

1 notice to Creditors, except as may otherwise be required under the Plan or the  
2 Confirmation Order.

3  
4 **SECTION 17.**  
**EXCULPATIONS, INJUNCTIONS, AND RELEASES**

5 17.1 *Extension of Existing Injunctions and Stays.* Unless otherwise  
6 provided herein, all injunctions or stays arising under §§ 105 or 362, any order entered  
7 during the Chapter 11 Case under §§ 105 or 362 or otherwise, and in existence on the  
8 Effective Date, shall remain in full force and effect until the closing of the Chapter 11  
Case.

9 17.2 *Releases.*

10 a) **Debtor Release.** Pursuant to § 1123(b), and except as otherwise  
11 specifically provided in the Plan, for good and valuable consideration, on and after  
12 and subject to the occurrence of the Effective Date, the Debtor and its estate shall  
13 release each Released Party, and each Released Party is deemed released by the  
14 Debtor and the estate from any and all claims, obligations, rights, suits, damages,  
15 Causes of Action, remedies, and liabilities whatsoever, including any derivative  
16 claims, asserted or assertable on behalf of any of the Debtor or its estate, as applicable,  
17 whether known or unknown, foreseen or unforeseen, asserted or unasserted, accrued  
18 or unaccrued, matured or unmatured, determined or indeterminable, disputed or  
19 undisputed, liquidated or unliquidated, or due or to become due, existing or  
20 hereinafter arising, in law, equity, or otherwise, that the Debtor or the estate would  
21 have been legally entitled to assert in its own right, or on behalf of the Holder of any  
22 Claim or other entity, based on or relating to, or in any manner arising from, in whole  
23 or in part, the Debtor, the Debtor's liquidation, the Chapter 11 Case, the purchase,  
24 sale, transfer of any security, asset, right, or interest of the Debtor, the DAP Sale, the  
25 subject matter of, or the transactions or events giving rise to, any Claim that is treated  
26 in the Plan, the business or contractual arrangements between any Debtor and any  
27 Released Party, the treatment of Claims prior to or in the Chapter 11 Case, the  
negotiation, formulation, or preparation of the Plan or related agreements,  
instruments, or other documents, any other act or omission, transaction, agreement,  
event, or other occurrence taking place on and before the Petition Date, other than  
claims or liabilities arising out of or relating to any act or omission of a Released Party  
that constitutes fraud, willful misconduct, or gross negligence; provided, that, the  
foregoing Debtor Release shall not operate to waive or release any obligations of any  
party under the Plan or any other document, instrument, or agreement executed to  
implement the Plan. For avoidance of doubt, the foregoing Debtor Release does not

1 release any of the Debtor's claims, obligations, rights, suits, damages, Causes of  
2 Action, remedies, and liabilities with respect thereto.

3 Entry of the Confirmation Order shall constitute the Bankruptcy Court's  
4 approval, pursuant to Bankruptcy Rule 9019, of the Debtor Release, which includes  
5 by reference each of the related provisions and definitions contained herein, and  
6 further, shall constitute the Bankruptcy Court's finding that the Debtor Release is: (a)  
7 in exchange for the good and valuable consideration provided by the Released Parties;  
8 (b) a good faith settlement and compromise of the Claims released by the Debtor  
9 Release; (c) in the best interests of the Debtor and all Holders of Claims; (d) fair,  
equitable and reasonable; (e) given and made after due notice and opportunity for  
hearing; and (f) a bar to the Debtor or its estate asserting any Claim or Cause of Action  
released pursuant to the Debtor Release.

10 b) **Third Party Release.** On, and as of, the Effective Date and for  
11 good and valuable consideration, the receipt and sufficiency of which are  
12 acknowledged, the Released Parties shall be forever released (the "Third Party  
13 Release") from any and all claims, obligations, actions, suits, rights, debts, accounts,  
14 causes of action, remedies, avoidance actions, agreements, promises, damages,  
15 judgments, demands, defenses, and liabilities throughout the world under any law or  
16 court ruling through the Effective Date (including all claims based on or arising out  
17 of factors or circumstances that existed as of or prior to the Effective Date, including  
18 claims based on negligence or strict liability, and further including any derivative  
19 claims asserted on behalf of the Debtor, whether known or unknown, foreseen or  
20 unforeseen, existing or hereinafter arising, in law, equity, or otherwise) which the  
21 Debtor, its estate, Creditors, or other persons receiving or who are entitled to receive  
22 distributions under the Plan may have against any of them in any way related to this  
23 Chapter 11 Case, the negotiation, formulation, or preparation of the Plan or related  
24 agreements, instruments, or other documents, any other act or omission, transaction,  
25 agreement, event, or other occurrence taking place on and before the Petition Date,  
26 and related to the Debtor (or its predecessors), its business and/or its assets; provided,  
27 however, that the foregoing releases are granted only by (a) Creditors who returned a  
Ballot; and (b) Creditors who were sent a Solicitation Package or a Release Opt-Out  
Election Form, but either (i) did not vote; or (ii) did not return a Release Opt-Out  
Election Form; provided, however, that the release provided in this section shall not  
apply to (A) any Creditor whose Claim is not Allowed either in whole or in part; or  
(B) any Creditor in category (b) above if the Solicitation Package or Release Opt-Out  
Election Form was returned to the Debtor as undelivered and that such Creditor did  
not otherwise submit a Ballot; and provided further, however, that the release  
provided in this Section shall not extend to any claims by any Governmental Unit

1 with respect to criminal liability under applicable law, willful misconduct or bad faith  
2 under applicable law, ultra vires acts under applicable law.

3 c) **Limitation of Claims Against the Liquidating Trust.** As of the  
4 Effective Date, except as provided in this Plan or the Confirmation Order, all Persons  
5 shall be precluded from asserting against the Liquidating Trust any other or further  
6 Claims, obligations, suits, judgments, damages, demands, debts, rights, causes of  
7 action, and liabilities whatsoever, relating to the Debtor based upon any acts,  
omissions, liabilities, transactions, occurrences, or other activity of any nature that  
occurred prior to the Effective Date.

8 d) **WAIVER OF LIMITATIONS ON RELEASES.** THE LAWS  
9 OF SOME STATES (FOR EXAMPLE, CALIFORNIA CIVIL CODE § 1542)  
10 PROVIDE, IN WORDS OR SUBSTANCE, THAT A GENERAL RELEASE DOES  
11 NOT EXTEND TO CLAIMS WHICH THE RELEASING PARTY DOES NOT  
12 KNOW OR SUSPECT TO EXIST IN HIS/HER/ITS FAVOR AT THE TIME OF  
13 EXECUTING THE RELEASE, WHICH IF KNOWN BY THE RELEASING  
14 PARTY MUST HAVE MATERIALLY AFFECTED THE RELEASING PARTY'S  
15 DECISION TO RELEASE. THE RELEASING PARTIES IN SECTIONS 17.2(a)-  
(c) OF THE PLAN ARE DEEMED TO HAVE WAIVED ANY RIGHTS THEY  
MAY HAVE UNDER SUCH STATE LAWS AS WELL AS UNDER ANY OTHER  
STATUTES OR COMMON LAW PRINCIPLES OF SIMILAR EFFECT.

16 17.3 ***Injunctions.***

17 a) **General Injunction.** Except as otherwise expressly provided  
18 herein, all Persons who have held, currently hold or may hold a Claim against the  
19 Debtor are permanently enjoined on and after the Effective Date from taking any  
20 action in furtherance of such Claim or any other Cause of Action released and  
21 discharged under the Plan, including, without limitation, the following actions against  
22 any Released Party: (a) commencing, conducting or continuing in any manner,  
23 directly or indirectly, any action or other proceeding with respect to a Claim;  
24 (b) enforcing, levying, attaching, collecting or otherwise recovering in any manner or  
25 by any means, whether directly or indirectly, any judgment, award, decree or order  
26 with respect to a Claim; (c) creating, perfecting or enforcing in any manner, directly  
27 or indirectly, any lien or encumbrance of any kind with respect to a Claim; (d)  
28 asserting any setoff, right of subrogation or recoupment of any kind, directly or  
indirectly, against any debt, liability or obligation due to the Debtor, the Post-  
Effective Date Debtor or the Liquidating Trust with respect to a Claim; or (e)  
commencing, conducting or continuing any proceeding that does not conform to or  
comply with or is contradictory to the provisions of this Plan; provided, however, that  
nothing in this injunction shall preclude the Holders of Claims against the Debtor



1 from enforcing any obligations of the Debtor, the Post-Effective Date Debtor, the  
2 Liquidating Trust, the Liquidating Trustee, or Co-Liquidating Trustee under this Plan  
3 and the contracts, instruments, releases and other agreements delivered in connection  
4 herewith, including, without limitation, the Confirmation Order, or any other order of  
5 the Bankruptcy Court in the Chapter 11 Case. By accepting a Distribution made  
6 pursuant to this Plan, each Holder of an Allowed Claim shall be deemed to have  
7 specifically consented to the injunctions set forth in this Section.

8           b) **Other Injunctions.** The Post-Effective Date Debtor, the  
9 Liquidating Trustee, the Co-Liquidating Trustee, the Post-Effective Date Board of  
10 Directors, or the Liquidating Trust and their respective members, directors, officers,  
11 agents, attorneys, advisors or employees shall not be liable for actions taken or  
12 omitted in its or their capacity as, or on behalf of, the Post-Effective Date Debtor, the  
13 Post-Effective Date Board of Directors, the Liquidating Trustee, the Co-Liquidating  
14 Trustee, or the Liquidating Trust (as applicable), except those acts found by Final  
15 Order to arise out of its or their willful misconduct, gross negligence, fraud, and/or  
16 criminal conduct, and each shall be entitled to indemnification and reimbursement for  
17 fees and expenses in defending any and all of its or their actions or inactions in its or  
18 their capacity as, or on behalf of the Post-Effective Date Board of Directors, the Post-  
19 Effective Date Debtor, the Liquidating Trustee, the Co-Liquidating Trustee, or the  
20 Liquidating Trust (as applicable), except for any actions or inactions found by Final  
21 Order to involve willful misconduct, gross negligence, fraud, and/or criminal conduct.  
22 Any indemnification claim of the Post-Effective Date Debtor, the Post-Effective Date  
23 Board of Directors, the Liquidating Trustee, the Co-Liquidating Trustee, and the other  
24 parties entitled to indemnification under this subsection shall be satisfied from the  
25 Liquidating Trust Assets. The parties subject to this Section shall be entitled to rely,  
26 in good faith, on the advice of retained professionals, if any.

27           17.4 **Exculpation.** To the maximum extent permitted by applicable law, each  
28 Exculpated Party shall not have or incur any liability for any act or omission in  
connection with, related to, or arising out of the Chapter 11 Case (including, without  
limitation, the filing of the Chapter 11 Case), the marketing and the DAP Sale, the  
Plan and any related documents (including, without limitation, the negotiation and  
consummation of the Plan, the pursuit of the Effective Date, the administration of the  
Plan, or the property to be distributed under the Plan), or each Exculpated Party's  
exercise or discharge of any powers and duties set forth in the Plan, except with  
respect to the actions found by Final Order to constitute willful misconduct, gross  
negligence, fraud, or criminal conduct, and, in all respects, each Exculpated Party  
shall be entitled to rely upon the advice of counsel with respect to their duties and  
responsibilities under the Plan. Without limitation of the foregoing, each such  
Exculpated Party shall be released and exculpated from any and all Causes of Action

1 that any Person is entitled to assert in his/her/their own right or on behalf of any other  
2 Person, based in whole or in part upon any act or omission, transaction, agreement,  
3 event or other occurrence in any way relating to the subject matter of this Section.

4 17.5 **No Recourse.** If a Claim is Allowed in an amount for which after  
5 application of the payment priorities established by this Plan (including, without  
6 limitation, in Sections 8 and 10 hereof) there is insufficient value to provide a recovery  
7 equal to that received by other Holders of Allowed Claims in the respective Class, no  
8 Claim Holder shall have recourse for any such deficiency against any of the Released  
9 Parties, the Post-Effective Date Debtor, the Post-Effective Date Board of Directors,  
10 the Liquidating Trustee, the Co-Liquidating Trustee, or the Liquidating Trust.  
11 However, except as specifically stated otherwise in this Plan, nothing in this Plan shall  
12 modify any right of a Holder of a Claim under § 502(j). The obligations under this  
13 Plan of the Debtor's Estate shall (i) be contractual only and shall not create any  
14 fiduciary relationship and (ii) be obligations of the Debtor's Estate only and no  
15 individual acting on behalf of the Debtor, the Committee, the Post-Effective Date  
16 Debtor, the Post-Effective Date Board of Directors, the Liquidating Trustee, the Co-  
17 Liquidating Trustee, the Oversight Committee, or otherwise, shall have any personal  
18 or direct liability for these obligations. Approval of the Plan by the Confirmation  
19 Order shall not in any way limit the foregoing.

20 17.6 **Post-Confirmation Liability of Liquidating Trustee and the Co-**  
21 **Liquidating Trustee.** The Liquidating Trustee and the Co-Liquidating Trustee,  
22 together with their respective consultants, agents, advisors, attorneys, accountants,  
23 financial advisors, other representatives and the professionals engaged by the  
24 foregoing (collectively, the "**Indemnified Parties**") shall not be liable for any and all  
25 liabilities, losses, damages, claims, causes of action, costs and expenses, including but  
26 not limited to attorneys' fees arising out of or due to their actions or omissions, or  
27 consequences of such actions or omissions, to the Holders of Claims for any action or  
28 inaction taken in good faith in connection with the performance or discharge of their  
duties under this Plan, except the Indemnified Parties will be liable for actions or  
inactions that are grossly negligent, fraudulent, or which constitute willful misconduct  
(in each case, liability shall be subject to determination by final order of a court of  
competent jurisdiction). However, any act or omission taken with the approval of the  
Bankruptcy Court, and not inconsistent therewith, will be conclusively deemed not to  
constitute gross negligence, fraud or willful misconduct. In addition, the Liquidating  
Trust and the Estate shall, to the fullest extent permitted by the laws of the State of  
California, indemnify and hold harmless the Indemnified Parties from and against and  
with respect to any and all liabilities, losses, damages, claims, costs and expenses,  
including but not limited to attorneys' fees arising out of or due to their actions or  
omissions, or consequences of such actions or omissions, with respect to the

1 Liquidating Trust and the Estate or the implementation or administration of the Plan  
2 if the Indemnified Party acted in good faith and in a manner reasonably believed to  
3 be in or not opposed to the best interest of the Liquidating Trust and the Estate. To  
4 the extent the Liquidating Trust indemnifies and holds harmless the Indemnified  
5 Parties as provided above, the legal fees and related costs incurred by counsel to the  
6 Liquidating Trustee or the Co-Liquidating Trustee in monitoring and participating in  
7 the defense of such claims giving rise to the right of indemnification shall be paid as  
8 expenses of the Liquidating Trust. All rights of the Persons exculpated and  
9 indemnified pursuant hereto shall survive confirmation of the Plan.

10 **17.7 Preservation of Rights of Action.**

11 a) **Vesting of Causes of Action.** Except as otherwise provided in the  
12 Plan or Confirmation Order, including any Cause of Action that is expressly waived,  
13 relinquished, exculpated, released, settled, or compromised under the Plan or  
14 Confirmation Order (including, without limitation, pursuant to the Debtor/Estate  
15 Release), (i) in accordance with § 1123(b)(3), any Causes of Action that the Debtor  
16 holds or may hold against any Entity shall vest upon the Effective Date in the  
17 Liquidating Trust; (ii) after the Effective Date, the Liquidating Trustee shall have the  
18 exclusive right to institute, prosecute, abandon, settle, or compromise any Causes of  
19 Action the Estate holds or may hold against any Entity constituting Liquidating Trust  
20 Assets, in accordance with the terms of the Plan and the Liquidating Trust Agreement,  
21 as applicable, and without further order of the Bankruptcy Court, in any court or other  
22 tribunal, including, without limitation, in an adversary proceeding filed in the Chapter  
23 11 Case; and (iii) Causes of Action and recoveries therefrom shall remain the sole  
24 property of the Liquidating Trust, and Holders of Claims shall have no direct right or  
25 interest in to any such Causes of Action or recoveries.

26 b) **Preservation of All Causes of Action Not Expressly Settled or**  
27 **Released.** Unless a Cause of Action against a Holder of a Claim or other Entity is  
28 expressly waived, relinquished, released, compromised, or settled in the Plan  
(including, without limitation, pursuant to the Debtor/Estate Release) and/or or any  
Final Order (including the Confirmation Order), the Debtor and the Liquidating  
Trustee expressly reserve such retained Cause of Action (collectively, the “Retained  
Causes of Action”) for later adjudication by the Liquidating Trustee (including,  
without limitation, Causes of Action not specifically identified or described in the  
Plan Supplement or elsewhere, or of which the Debtor may be presently unaware, or  
which may arise or exist by reason of additional facts or circumstances unknown to  
the Debtor at this time, or facts or circumstances that may change or be different from  
those the Debtor now believe to exist) and, therefore, no preclusion doctrine,  
including, without limitation, the doctrines of res judicata, collateral estoppel, issue

1 preclusion, claim preclusion, waiver, estoppel (judicial, equitable, or otherwise) or  
2 laches shall apply to such Retained Causes of Action upon or after the entry of the  
3 Confirmation Order or Effective Date based on the Plan or Confirmation Order,  
4 except where such Causes of Action have been released or otherwise resolved by a  
5 Final Order (including the Confirmation Order). In addition, the Debtor and  
6 Liquidating Trustee expressly reserve the right to pursue or adopt claims alleged in  
any lawsuit in which a Debtor is a defendant or interested party against any Entity,  
including, without limitation, the plaintiffs or co-defendants in such lawsuits.

- 7 i. The Retained Causes of Action preserved hereunder include,  
8 without limitation, the following claims, rights, or other causes  
9 of action:
- 10 ii. Against the Excluded Parties and/or any other party not  
11 expressly released pursuant to this Plan;
- 12 iii. that constitute Avoidance Actions;
- 13 iv. relating to pending litigation, including, without limitation, the  
14 suits, administrative proceedings, executions, garnishments,  
15 and attachments listed in the Debtor's Schedules;
- 16 v. against vendors, suppliers of goods or services (including  
17 attorneys, accountants, consultants, or other professional  
18 service providers), utilities, contract counterparties, and other  
19 parties for, including but not limited to: (A) services rendered;  
20 (B) over- and under-payments, back charges, duplicate  
21 payments, improper holdbacks, deposits, warranties,  
22 guarantees, indemnities, setoff, or recoupment; (C) failure to  
23 fully perform or to condition performance on additional  
24 requirements under contracts with any one or more of the  
25 Debtors; (D) wrongful or improper termination, suspension of  
26 services, or supply of goods, or failure to meet other  
27 contractual or regulatory obligations; (E) indemnification  
28 and/or warranty claims; or (F) turnover Causes of Action  
arising under §§ 542 or 543;
- vi. against health plans, payors, and other related providers;
- vii. against landlords or lessors, including, without limitation, for  
erroneous charges, overpayments, returns of security deposits,  
indemnification, or for environmental claims;

- viii. arising against current or former tenants or lessees, including, without limitation, for non-payment of rent, damages, and holdover proceedings;
- ix. arising from damage to any of the Debtor's property;
- x. relating to claims, rights, or other Causes of Action the Debtor may have to interplead third parties in actions commenced against the Debtor;
- xi. for collection of a debt or other amount owed to the Debtor;
- xii. against insurance carriers, reinsurance carriers, underwriters, surety bond issuers or other related or similar parties relating to coverage, indemnity, contribution, reimbursement, or other matters; and
- xiii. arising under or relating to the Asset Purchase Agreement and related documents including, but not limited to, enforcement of such agreements by the Debtor's Estate and/or breaches of any and/or all of such agreements by the applicable non-Debtor parties.

c) **Transactions Subject to Review by Liquidating Trustee or Co-Liquidating Trustee.** Subject to the immediately preceding paragraph, any Entity to which the Debtor has incurred an obligation (whether on account of services, the purchase or sale of goods, or otherwise), or that has received services from the Debtor or a Transfer of money or property of the Debtor, or that has received services from the Debtor or a Transfer of money or property of the Debtor, or that has transacted business with the Debtor, or that has leased property from the Debtor, should assume and is hereby advised that any such obligation, Transfer, or transaction may be reviewed by the Liquidating Trustee or Co-Liquidating Trustee, as applicable, subsequent to the Effective Date and may be the subject of an action after the Effective Date, regardless of whether (i) such Entity has filed a Proof of Claim against the Debtor in the Chapter 11 Case; (ii) the Debtor, the Committee, the Liquidating Trustee, or Co-Liquidating Trustee have objected to any such Entity's Proof of Claim; (iii) any such Entity's Claim was included in the Schedules; (iv) the Debtor, the Committee, the Liquidating Trustee, or Co-Liquidating Trustee have objected to any such Entity's Scheduled Claim; (v) any such Entity's Scheduled Claim has been identified by the Debtor, the Committee, the Liquidating Trustee, or Co-Liquidating Trustee as disputed, contingent, or unliquidated; or (vi) the Debtor, the Liquidating



1 Trustee, or Co-Liquidating Trustee have identified any potential claim or Cause of  
2 Action against such Entity herein.

3 17.8 ***Termination of Responsibilities of the Patient Care Ombudsman.*** On  
4 the Closing Date, the duties and responsibilities of the Patient Care Ombudsman were  
5 terminated and the Patient Care Ombudsman was discharged from his duties as  
6 Patient Care Ombudsman and is not required to file any further reports or perform  
7 any additional duties as Patient Care Ombudsman. No person or entity may seek  
8 discovery in any form, including but not limited to by motion, subpoena, notice of  
9 deposition or request or demand for production of documents, from the Patient Care  
10 Ombudsman or his agents, professionals, employees, other representatives, designees  
11 or assigns (collectively, with the Patient Care Ombudsman, the “***Ombudsman***  
12 ***Parties***”) with respect to any matters arising from or relating in any way to the  
13 performance of the duties of the Patient Care Ombudsman in this Chapter 11 Case,  
14 including, but not limited to, pleadings, reports or other writings filed by the Patient  
15 Care Ombudsman in connection with this Chapter 11 Case. Nothing herein shall in  
16 any way limit or otherwise affect the obligations of the Patient Care Ombudsman  
17 under confidentiality agreements, if any, between the Patient Care Ombudsman and  
18 any other person or entity or shall in any way limit or otherwise affect the Patient Care  
19 Ombudsman’s obligation, under § 333(c)(1) or other applicable law or Bankruptcy  
20 Court Orders, to maintain patient information, including patient records, as  
21 confidential, and no such information shall be released by the Patient Care  
22 Ombudsman without further order of the Bankruptcy Court.

## 23 **SECTION 18.**

### 24 **CONDITIONS PRECEDENT TO EFFECTIVE DATE**

25 18.1 ***Conditions Precedent to Confirmation of Plan.*** The confirmation of the  
26 Plan shall be conditioned upon the Bankruptcy Court entering the Confirmation Order  
27 in form and substance satisfactory to the Plan Proponents.

28 18.2 ***Conditions to Effective Date.*** The following are conditions precedent to  
the Effective Date:

- a) ***The Confirmation Order shall have been entered by this Court in form and substance acceptable to the Plan Proponents, which Confirmation Order shall not have been terminated, suspended, vacated or stayed, and shall not have been amended or modified after entry without the consent of the Plan Proponents;***

- 1           **b)    *The Liquidating Trustee shall have accepted the terms of the***  
2           ***Liquidating Trustee’s service and compensation, and such terms***  
3           ***and compensation shall have been approved by the Court in the***  
4           ***Confirmation Order;***
- 5           **c)    *The Co-Liquidating Trustee shall have accepted the terms of the***  
6           ***Co-Liquidating Trustee’s service and compensation, and such***  
7           ***terms and compensation shall have been approved by the Court***  
8           ***in the Confirmation Order;***
- 9           **d)    *With respect to all other documents and agreements necessary***  
10           ***to implement the Plan: (1) all conditions precedent to such***  
11           ***documents and agreements (other than any conditions precedent***  
12           ***related to the occurrence of the Effective Date) shall have been***  
13           ***satisfied or waived pursuant to the terms of such documents or***  
14           ***agreements; (2) such documents and agreements shall have***  
15           ***been tendered for delivery to the required parties and have been***  
16           ***approved by any required parties and, to the extent required,***  
17           ***filed with and approved by the applicable authorities in the***  
18           ***relevant jurisdiction; and (3) such documents and agreements***  
19           ***shall have been effected or executed; and***
- 20           **e)    *All other actions, authorizations, consents, and regulatory***  
21           ***approvals required (if any) and necessary to implement the***  
22           ***provisions of the Plan shall have been obtained, effected, or***  
23           ***executed in a manner acceptable to the Plan Proponents or, if***  
24           ***waivable, waived by the Person or Persons (or Entity or Entities)***  
25           ***entitled to the benefit thereof.***

26           **18.3    *Waiver of Condition.*** The Plan Proponents may waive the conditions to  
27           effectiveness of this Plan, set forth in Section 18.2 hereof, without leave of the  
28           Bankruptcy Court and without any formal action, other than proceeding with  
confirmation of this Plan and filing a notice of confirmation with the Bankruptcy  
Court. To the extent that the Debtor believes that it is unable to comply with the  
conditions to the effectiveness of this Plan, set forth in Section 18.2 hereof, the Plan  
Proponents reserve the right to amend the Plan at such time (in accordance with the  
terms hereof) to address such inability.

**SECTION 19.**  
**RETENTION OF JURISDICTION**

19.1 ***Bankruptcy Court Jurisdiction.*** Unless otherwise provided herein or in the Confirmation Order, on and after the Effective Date, the Bankruptcy Court shall retain jurisdiction over all matters arising in, arising under, or related to the Chapter 11 Case. Without limiting the foregoing, the Bankruptcy Court shall retain jurisdiction to:

- (a) allow, disallow determine, liquidate, classify, estimate, or establish the priority or secured or unsecured status of any Claim, including the resolution of any request for payment of any Administrative Claim or Professional Claim and the resolution of any objections to the allowance or priority of Claims, and the resolution of any claim objections brought by the Debtor and/or the Committee, by the Liquidating Trustee and Co-Liquidating Trustee on behalf of the Liquidating Trust;
- (b) resolve any matters related to the assumption, assumption and assignment, or rejection of any Executory Agreement to which the Debtor is a party and to hear, determine and, if necessary, liquidate, any Claims arising from, or cure amounts related to, such assumption or rejection;
- (c) determine any motion, adversary proceeding, application, contested matter, and other litigated matter pending on or commenced after the Effective Date, including, without limitation, any and all Causes of Action preserved under the Plan commenced prior to, on, or after the Effective Date;
- (d) ensure that Distributions to Holders of Allowed Claims are accomplished in accordance with the Plan;
- (e) hear and determine matters relating to claims with respect to the Debtor's director and officer insurance;
- (f) enter, implement or enforce such orders as may be appropriate in the event that the Confirmation Order is for any reason stayed, reversed, revoked, modified, or vacated;
- (g) issue injunctions, enter and implement other orders, and take such other actions as may be necessary or appropriate to restrain interference by any Person with the consummation,

1 implementation or enforcement of this Plan, the Confirmation  
2 Order or any other order of the Bankruptcy Court, including,  
3 without limitation, any actions relating to the Nonprofit Status of  
the Post-Effective Date Debtor;

4 (h) resolve a dispute with respect to and/or otherwise appoint a  
5 replacement of the Liquidating Trustee or Co-Liquidating Trustee;

6 (i) hear and determine any application to modify this Plan in  
7 accordance with § 1127, to remedy any defect or omission or  
8 reconcile any inconsistency in this Plan, the Disclosure Statement,  
9 any contract, instrument, release, or other agreement or document  
10 created in connection therewith, or any order of the Bankruptcy  
Court, including the Confirmation Order, in such a manner as may  
be necessary to carry out the purposes and effects thereof;

11 (j) hear and determine all applications under §§ 330, 331, and 503(b)  
12 for awards of compensation for services rendered and  
13 reimbursement of expenses incurred prior to the Effective Date;

14 (k) hear and determine disputes arising in connection with the  
15 interpretation, implementation, obligation or enforcement of this  
16 Plan, the Confirmation Order, any transactions or payments  
contemplated in the Plan, or any agreement, instrument, or other  
document governing or relating to any of the foregoing;

17 (l) take any action and issue such orders as may be necessary to  
18 construe, enforce, implement, execute and consummate this Plan,  
19 including all contracts, instruments, releases, and other  
20 agreements or documents created in connection therewith, or to  
maintain the integrity of this Plan following consummation;

21 (m) determine such other matters and for such other purposes as may  
22 be provided in the Plan and/or the Confirmation Order;

23 (n) hear and determine matters concerning state, local, and federal  
24 taxes in accordance with §§ 346, 505, and 1146, including without  
25 limitation, (i) any requests for expedited determinations under §  
26 505(b) filed, or to be filed, with respect to tax returns for any and  
27 all taxable periods ending after the Petition Date through, and  
including, the date of Final Distribution under the Plan, and (ii)

any other matters relating to the Nonprofit Status of the Post-Effective Date Debtor;

(o) hear and determine any other matters related hereto and not inconsistent with the Bankruptcy Code and Title 28 of the United States Code;

(p) authorize recovery of all assets of any of the Debtor and property of the Debtor's Estate, wherever located;

(q) consider any and all claims against each Released Party involving or relating to the administration of the Chapter 11 Case, any rulings, orders, or decisions in the Chapter 11 Case, or any aspects of the Debtor's Chapter 11 Case and the events leading up to the commencement of the Chapter 11 Case, including the decision to commence the Chapter 11 Case, the development and implementation of the Plan, the decisions and actions taken prior to or during the Chapter 11 Case and any asserted claims based upon or related to prepetition obligations of the Debtor for the purpose of determining whether such claims belong to the Estate or third parties. In the event it is determined that any such claims belong to third parties, then, subject to any applicable subject matter jurisdiction limitations, the Bankruptcy Court shall have exclusive jurisdiction with respect to any such litigation, subject to any determination by the Bankruptcy Court to abstain and consider whether such litigation should more appropriately proceed in another forum;

(r) hear and resolve any disputes regarding the reserves required hereunder, including without limitation, disputes regarding the amounts of such reserves or the amount, allocation and timing of any releases of such reserved funds; and

(s) enter the Final Decree closing the Chapter 11 Case.

## **SECTION 20.** **MISCELLANEOUS PROVISIONS**

**20.1 *Termination of All Employee, Retiree and Workers' Compensation Benefits.*** All existing employee benefits (including, without limitation, workers' compensation benefits, health care plans, disability plans, severance benefit plans, incentive plans, and life insurance plans) and retiree benefits (as such term is defined



1 under § 1114(a)) not previously terminated by the Debtor, or assumed by the Debtor  
2 in the Schedule of Assumed Contracts, shall be terminated on or before the Effective  
3 Date.

4 **20.2 *Administrative Claims Bar Date.*** All Requests for Payment of an  
5 Administrative Claim must be filed with the Bankruptcy Court and served on the  
6 Debtor no later than the Administrative Claims Bar Date. Such Requests for Payment  
7 may include estimates of amounts through the Effective Date. The Administrative  
8 Claims Reserve shall be established on the Effective Date in an amount determined  
9 by the Bankruptcy Court in order to satisfy all Administrative Claims that have not  
10 been Allowed as of the Effective Date and all Allowed Administrative Claims that  
11 will be paid after the Effective Date. In the event that the Debtor, the Liquidating  
12 Trustee objects to an Administrative Claim, the Bankruptcy Court shall determine the  
13 Allowed amount of such Administrative Claim. Notwithstanding the foregoing: (a)  
14 no Request for Payment need be filed with respect to an undisputed postpetition  
15 obligation which was paid or is payable by the Debtor in the ordinary course of  
16 business; provided, however, that in no event shall a postpetition obligation that is  
17 contingent or disputed and subject to liquidation through pending or prospective  
18 litigation, including, but not limited to, alleged obligations arising from personal  
19 injury, property damage, products liability, consumer complaints, employment law  
20 (excluding claims arising under workers' compensation law), secondary payor  
21 liability, or any other disputed legal or equitable claim based on tort, statute, contract,  
equity, or common law, be considered to be an obligation which is payable in the  
ordinary course of business; and (b) no Request for Payment need be filed with respect  
to fees payable pursuant to 28 U.S.C. § 1930. All Administrative Claims that become  
Allowed after the Effective Date shall be paid solely from the Administrative Claims  
Reserve, and shall not constitute a claim against the Liquidating Trust, the Liquidating  
Trustee, or any of the Liquidating Trust Assets. No Holder of an Administrative Claim  
shall have recourse for any deficiency in the payment of its Administrative Claim  
against any of the Released Parties, the Post-Effective Date Debtor, the Post-Effective  
Date Board of Directors, the Liquidating Trustee, or the Liquidating Trust.

22 **20.3 *Exemption from Transfer Taxes.*** Pursuant to § 1146(c), the assignment  
23 or surrender of any lease or sublease, or the delivery of any deed or other instrument  
24 of transfer under, in furtherance of, or in connection with, this Plan, including any  
25 deeds, bills of sale or assignments executed in connection with any disposition of  
assets contemplated by this Plan, whether real or personal property, shall not be

1 subject to any stamp, real estate transfer, mortgage recording, sales, use or other  
2 similar tax.

3       **20.4 Amendments.** The Plan Proponents reserve the right, in accordance with  
4 the Bankruptcy Code and the Bankruptcy Rules, to amend or modify this Plan at any  
5 time prior to the entry of the Confirmation Order. After the entry of the Confirmation  
6 Order, the Plan Proponents may, upon order of the Bankruptcy Court, amend or  
7 modify this Plan, in accordance with § 1127(b), or remedy any defect or omission or  
8 reconcile any inconsistency in this Plan in such manner as may be necessary to carry  
9 out the purpose and intent of this Plan. A Holder of an Allowed Claim that is deemed  
to have accepted this Plan shall be deemed to have accepted this Plan as modified if  
the proposed modification does not materially and adversely change the treatment of  
the Claim of such Holder.

10       **20.5 Revocation or Withdrawal of Plan.** The Plan Proponents may withdraw  
11 or revoke this Plan at any time prior to the Effective Date. If the Plan Proponents  
12 revoke or withdraw this Plan prior to the Effective Date, or if the Effective Date does  
13 not occur, then this Plan shall be deemed null and void. In such event, nothing  
14 contained herein shall be deemed to constitute a waiver or release of any Claim by or  
against the Debtor or any other Person or to prejudice in any manner the rights of the  
Debtor or any other Person in any further proceedings involving the Debtor.

15       **20.6 Severability.** In the event that the Bankruptcy Court determines, prior to  
16 the Effective Date, that any provision of this Plan is invalid, void or unenforceable,  
17 the Bankruptcy Court shall, with the consent of the Plan Proponents, have the power  
18 to alter and interpret such term or provision to make it valid or enforceable to the  
19 maximum extent practicable, consistently with the original purpose of the term or  
20 provision held to be invalid, void or unenforceable, and such term or provision shall  
21 then be applicable as altered or interpreted. Notwithstanding any such holding,  
22 alteration or interpretation, the remainder of the terms and provisions of this Plan shall  
23 remain in full force and effect and shall in no way be affected, impaired or invalidated  
by such holding, alteration or interpretation. The Confirmation Order shall constitute  
a judicial determination and shall provide that each term and provision of this Plan,  
as it may have been altered or interpreted in accordance with the foregoing, is valid  
and enforceable pursuant to its terms.

24       **20.7 Request for Expedited Determination of Taxes.** The Plan Proponents or  
25 the Liquidating Trustee, as applicable, shall have the right to request an expedited  
26 determination under § 505(b) with respect to tax returns filed, or to be filed, for any  
27  
28

1 and all taxable periods ending after the Petition Date through and including the date  
2 of Final Distribution under the Plan.

3       **20.8 *Securities Exemption.*** To the extent the Trust Beneficial Interests are  
4 deemed or asserted to constitute securities, the Trust Beneficial Interests and the  
5 issuance and distribution thereof shall be exempt from Section 5 of the Securities Act,  
6 if applicable, and from any state or federal securities laws requiring registration for  
7 offer or sale of a security or registration or licensing of an issuer of, underwriter of,  
8 or broker or dealer in, a security, and shall otherwise enjoy all exemptions available  
9 for distributions of securities under a plan of reorganization in accordance with all  
10 applicable law, including without limitation, § 1145.

11       **20.9 *U.S. Trustee Quarterly Fees and Post-Confirmation Status Reports.***  
12 All fees payable under 28 U.S.C. § 1930(a)(6) shall be paid by the Debtor in the  
13 amounts and at the times such fees may become due up to and including the Effective  
14 Date. The Liquidating Trust shall pay all fees payable by the Debtor under 28 U.S.C.  
15 § 1930(a)(6) until the Chapter 11 Case is closed, dismissed or converted. After the  
16 Effective Date, the Liquidating Trust and Post-Effective Date Debtor shall file and  
17 serve the quarterly status reports required by § 1106(a)(7), Bankruptcy Rule  
18 2015(a)(5), and 28 C.F.R. § 58.8.

19       **20.10 *Courts of Competent Jurisdiction.*** If the Bankruptcy Court abstains  
20 from exercising, or declines to exercise, jurisdiction or is otherwise without  
21 jurisdiction over any matter arising out of this Plan, such abstention, refusal or failure  
22 of jurisdiction shall have no effect upon and shall not control, prohibit or limit the  
23 exercise of jurisdiction by any other court having competent jurisdiction with respect  
24 to such matter.

25       **20.11 *Governing Law.*** Except to the extent that the Bankruptcy Code or  
26 Bankruptcy Rules are applicable, the rights, duties and obligations arising under this  
27 Plan shall be governed by, and construed and enforced in accordance with, the laws  
28 of the State of California, without giving effect to the principles of conflict of laws  
thereof.

29       **20.12 *Continuing Effect of the Bankruptcy Court Orders and Settlement***  
30 ***Stipulations.*** Unless otherwise set forth in the Plan or the Confirmation Order or  
31 otherwise ordered by the Bankruptcy Court, the orders of the Bankruptcy Court and  
32 any other settlement stipulations entered into by the Debtor (including without  
33 limitation, the DHCS 9019 Order, the DHCS Settlement Agreement, agreements to  
34 lift the automatic stay, resolve litigation claims and limit recoveries to available  
35 insurance proceeds) shall not be modified, limited or amended by the Plan and shall  
36 remain in full force and effect. To the extent of any direct conflict between the terms

1 of this Plan and any settlement agreements, the conflicting provisions of such  
2 settlement agreements shall govern with respect to the treatment of Allowed Claims  
as provided for therein.

3  
4 20.13 **Substantial Consummation.** On the Effective Date, the Plan shall be  
deemed substantially consummated under §§ 1101 and 1127(b).

5  
6 20.14 **Waiver of Fourteen-Day Stay.** The Plan Proponents request as part of  
the Confirmation Order a waiver from the Bankruptcy Court of the 14-day stay of  
7 Bankruptcy Rule 3020(e) and, to the extent applicable, a waiver of the 14-day stay of  
Bankruptcy Rule 6004(g).

8  
9 20.15 **Reservation of Rights.** Neither the filing of the Plan nor any statement  
or provision contained in the Plan, nor the taking by any party in interest of any action  
10 with respect to the Plan, shall: (a) be or be deemed to be an admission against interest  
and (b) until the Effective Date, be or be deemed to be a waiver of any rights any party  
11 in interest may have (i) against any other party in interest, or (ii) in or to any of the  
assets of any other party in interest, and, until the Effective Date, all such rights are  
12 specifically reserved. In the event that the Plan is not confirmed or fails to become  
effective, neither the Plan nor any statement contained in the Plan may be used or  
13 relied upon in any manner in any suit, action, proceeding, or controversy within or  
without the Chapter 11 Case involving the Debtor, except with respect to  
14 Confirmation of the Plan.

15  
16 20.16 **Successors and Assigns.** The rights, benefits, and obligations of any  
17 Entity named or referred to in the Plan shall be binding on, and shall inure to the  
benefit of, the heirs, executors, administrators, successors, and/or assigns of such  
18 Entity.

19  
20 20.17 **Time.** In computing any period of time prescribed or allowed by this  
Plan, unless otherwise set forth herein or determined by the Bankruptcy Court, the  
21 provisions of Bankruptcy Rule 9006 shall apply. Any reference to “day” or “days”  
shall mean calendar days, unless otherwise specified herein.

22  
23 20.18 **Business Day Transactions.** In the event that any payment or act under  
this Plan is required to be made or performed on a date that is not a Business Day,  
24 then the making of such payment or the performance of such act may be completed

1 on or as soon as reasonably practicable on the next succeeding Business Day, but shall  
2 be deemed to have been completed as of the initial due date.

3 20.19 **Headings.** Headings are used in this Plan for convenience and reference  
4 only and shall not constitute a part of this Plan for any other purpose.

5 20.20 **Exhibits.** Exhibit A, any schedules to this Plan, and the Plan Supplement  
6 are incorporated into and are a part of this Plan as if set forth in full herein.

7 20.21 **Notices.** Any notices to or requests by parties in interest under or in  
8 connection with this Plan shall be in writing and served either by (i) certified mail,  
9 return receipt requested, postage prepaid, (ii) hand delivery or (iii) reputable overnight  
10 delivery service, all charges prepaid, and shall be deemed to have been given when  
11 received by the following parties:

12 If to the Debtor:

13 Borrego Community Health Foundation  
14 587 Palm Canyon Dr.  
15 Suite 208  
16 Borrego Springs, California 92004  
17 Attn: Doug Habig

18 with copies to:

19 Dentons US LLP  
20 Attorneys for the Debtor and Debtor-In-Possession  
21 601 South Figueroa Street, Suite 2500  
22 Los Angeles, California 90017  
23 1 213 623 9300  
24 Attn: Samuel R. Maizel  
25 Tania M. Moyron  
26 Rebecca M. Wicks

27 If to the Committee:

28 Pachulski Stang Ziehl & Jones LLP  
10100 Santa Monica Blvd., 13th Floor  
Los Angeles, California 90067  
1 310 227 6910  
Attn: Jeffrey N. Pomerantz  
Steven W. Golden



If to the Liquidating Trustee:

Ankura Consulting Group, LLC  
2000 K Street NW, 12<sup>th</sup> Floor  
Washington, DC 20006  
1 202 507 5499  
Attn: Isaac Lee

If to the Co-Liquidating Trustee:

FTI Consulting, Inc.  
8251 Greensboro Drive, Suite 400  
McLean, VA 22101  
1 202 262 4778  
Attn: Narendra Ganti

20.22 ***Post-Effective Date Notices.*** Following the Effective Date, except as otherwise provided herein, notices shall only be served on the Post-Effective Date Debtor, the Liquidating Trustee, the Co-Liquidating Trustee, the U.S. Trustee, and those Persons who file with the Court and serve upon the Liquidating Trust a request, which includes such Person's name, contact person, address, telephone number, facsimile number, and email, that such Person receive notice of post-Effective Date matters. Persons who had previously filed with the Court requests for special notice of the proceedings and other filings in the Chapter 11 Case shall not receive notice of post-Effective Date matters unless such Persons File a new request in accordance with this Section.

20.23 ***Conflict of Terms.*** In the event of a conflict between the terms of this Plan and the Disclosure Statement, the terms of this Plan shall control.

20.24 ***Entire Agreement.*** On the Effective Date, the Plan and the Confirmation Order shall supersede all previous and contemporaneous negotiations, promises, covenants, agreements, understandings, and representations on such subjects, all of which have become merged and integrated into the Plan.

Dated: San Diego, California  
As of December 4, 2023

**Exhibit A**

DENTONS US LLP  
601 SOUTH FIGUEROA STREET, SUITE 2500  
LOS ANGELES, CALIFORNIA 90017-5704  
213 623 9300

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**Exhibit A<sup>2</sup>**  
**Liquidation Analysis**

**Background**

Section 1129(a)(7) of the Bankruptcy Code, which is often referred to as the “best interests of creditors” test, requires that as a condition to confirmation of the Plan, each holder of a Claim in each Impaired Class must either (i) accept the Plan, or (ii) receive or retain under the Plan property of value that is not less than the amount the Holder of an Impaired Class Claim would receive or retain in a hypothetical liquidation under chapter 7 of the Bankruptcy Code (the “*Liquidation Analysis*”).

The Debtor prepared this Liquidation Analysis to include: (i) estimated cash proceeds that a chapter 7 trustee would generate if the Debtor’s Chapter 11 Case were converted to a chapter 7 case and the assets of the Debtor’s Estate were liquidated; (ii) estimated distribution that each Holder of a Claim would receive from the liquidation proceeds; and (iii) compared each Holder’s estimated distribution and recovery under a chapter 7 liquidation to the projected distribution and recovery under the Plan.

The Liquidation Analysis is based upon certain assumptions, and, as such, certain aspects may be different from those represented in the Plan. The Liquidation Analysis should be read in conjunction with the *Joint Combined Disclosure Statement and Chapter 11 Plan of Liquidation of Borrego Community Health Foundation* [Docket No. 1091].

THE PLAN PROPONENTS MAKE NO REPRESENTATIONS OR WARRANTIES REGARDING THE ACCURACY OF THESE ESTIMATES AND ASSUMPTIONS CONTAINED HEREIN, OR A CHAPTER 7 TRUSTEE’S ABILITY TO ACHIEVE THE PROJECTED RESULTS. IN THE EVENT THAT THE CHAPTER 11 CASE IS CONVERTED TO A CHAPTER 7 LIQUIDATION, ACTUAL RESULTS MAY VARY MATERIALLY FROM THE ESTIMATES AND PROJECTIONS SET FORTH IN THIS LIQUIDATION ANALYSIS.

**Presentation**

The Liquidation Analysis has been prepared assuming the Debtor converted its

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<sup>2</sup> Capitalized terms not otherwise defined herein shall have the meanings described to them in the *Joint Combined Disclosure Statement and Chapter 11 Plan of Liquidation of Borrego Community Health Foundation* [Docket No. 1091].

Chapter 11 Case to chapter 7 of the Bankruptcy Code on or about January 19, 2024 (the “*Liquidation Date*”).<sup>3</sup>

On the Liquidation Date, it is assumed the Bankruptcy Court would appoint a chapter 7 trustee to liquidate the Debtor’s remaining assets, wind down the Debtor and the Estate, and provide distributions to creditors considering the DHCS Settlement Agreement. The distributable value is assumed to be applied in the following order: (i) payment of the Allowed Secured Claims and the DHCS Sales Proceeds Recovery; (ii) chapter 7 administrative costs, including trustee fees, professional fees, and wind-down expenses; (iii) Allowed Chapter 11 Administrative Claims and Priority Claims; (iv) Allowed General Unsecured Claims; and (v) the Allowed DHCS Claim. The treatment of creditors in the context of a chapter 7 liquidation would be the same as they are under the Plan, but the distribution to those creditors would be significantly less.

The Liquidation Analysis assumes the Liquidating Trust under the Plan would employ existing Debtor and/or Committee professionals. Under the chapter 7 scenario, a chapter 7 trustee would be appointed to administer the Debtor’s assets. A chapter 7 trustee would be completely unfamiliar with the complexities of this Chapter 11 Case. Following the appointment of a chapter 7 trustee, the chapter 7 trustee would presumably hire new professionals who are equally unfamiliar with the complexities of this Chapter 11 Case. For example, there is significant litigation pending where the Debtor is a plaintiff, and those cases could eventually represent a meaningful source of recoveries for the Debtor’s Estate. The Debtor’s professionals are intimately familiar with that litigation. The result of a chapter 7 trustee’s employment of a substantial number of professionals unfamiliar with this complex Chapter 11 Case would be the incurrence of an extraordinary amount of additional professional fees. By contrast, the Debtor’s and the Committee’s professionals are skilled and already intimately familiar with the Chapter 11 Case.

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<sup>3</sup> The “Best Interest Test” requires a liquidation analysis that demonstrates that, if a claimant or interest holder is in an impaired class and that claimant or interest holder does not vote to accept the Plan, than that claimant or interest holder must receive or retain under the plan property of a value not less than the amount that such holder would receive or retain if the Debtor were forced to liquidate under chapter 7 of the Bankruptcy Code. It is not at all clear that this test applies in the bankruptcy of a nonprofit company. Unlike in the bankruptcy of a for-profit entity, the Bankruptcy Code and state law may preclude or restrict the forced sale of a nonprofit’s assets. 11 U.S.C. §§ 1112(c), 303. By way of example, under § 1112(c), a nonprofit’s creditors cannot force a nonprofit to convert its chapter 11 case to a chapter 7, nor under § 303 can they file an involuntary petition against a nonprofit. Similarly, state statutes impose stringent requirements on the transfer or sale of a nonprofit debtor’s assets, *see, e.g.*, CAL. CORP. CODE §§ 5913, 7913, 9633.5, and the involuntary dissolution of a nonprofit, *see, e.g.*, CAL. CORP. CODE §§ 6510-6519, 8510-8519, 9680.

1 Additionally, a chapter 7 trustee(s) would be under a statutory duty to liquidate the  
2 Debtor's assets as expeditiously as possible. *See* 11 U.S.C. § 704(a)(1). However, the  
3 Debtor must remain extant, with operating management and a board of directors until  
4 DAP Health obtains its own Medicare and Medi-Cal provider agreements, among  
5 other things. Since the Bankruptcy Code does not automatically authorize the chapter  
6 7 trustee to operate the Debtor's businesses following a conversion to chapter 7, the  
7 chapter 7 trustee would be required to seek authority to continue operating the Debtor  
8 after obtaining approval from the U.S. Trustee to make such request. *See, e.g.*, 11  
9 U.S.C. § 721 ("The court may authorize the trustee to operate the business of the  
10 debtor for a limited period, if such operation is in the best interest of the estate and  
11 consistent with the orderly liquidation of the estate."); Executive Office for the United  
12 States Trustee, U.S. Dept. of Justice *Handbook for Chapter 7 Trustees* (Oct. 1, 2012),  
13 at 4-31 ("The trustee must consult with the United States Trustee prior to seeking  
14 authority to operate the business[.]"). The chapter 7 trustee's discretion to move for  
15 an operating order under § 721, and the willingness of the U.S. Trustee and Court to  
16 grant such request, presents significant potential risks to creditor recoveries in chapter  
17 7 for several important reasons. The Debtor must be in a position to monitor DAP  
18 Health's operations for as long as DAP Health does not have its own provider  
19 agreements. Failure to allow DAP Health continued access to Medi-Cal receivables  
20 would imperil the continued viability of the Debtor's former clinics and breach the  
21 agreement between the Debtor and DAP Health. Thus, the risk that the Debtor would  
22 not continue to operate in a hypothetical chapter 7 case represents a substantial risk  
23 to creditor recoveries in comparison with the Plan. Additionally, the chapter 7 trustee  
24 and/or their professionals would have to have health care industry operational  
25 experience and experience collecting health care receivables, in general, and FQHC  
26 operational experience specifically, to provide the necessary oversight and ensure  
27 sufficient liquidation of Estate assets. Retaining this expertise will result in greatly  
28 increasing the cost to the chapter 7 trustee and the Estate.

21 The advantages of finishing a liquidation in chapter 11 are not just "common  
22 knowledge" among professionals. Experts have also concluded that conversion to  
23 chapter 7 offers few advantages over liquidation in chapter 11: cases converted from  
24 chapter 11 to chapter 7 take significantly longer to resolve than a "pure" chapter 11  
25 liquidation, and such cases require similar, if not greater, fees, and in the end provide  
26 creditors with statistically lower recovery rates than a comparable chapter 11  
27 procedure. *See* Arturo Bris, Ivo Welch and Ning Zhu, *The Costs of Bankruptcy:  
28 Chapter 7 Liquidation versus Chapter 11 Reorganization*, J. OF FINANCE, vol. 61(3),  
June 2006, at 1253.

## 28 Conclusion



1 The Plan demonstrates the Allowed DHCS Claim will receive a substantial recovery  
2 under the Plan. However, under a chapter 7 liquidation, the remaining value available  
3 for the Allowed DHCS Claim would be materially less compared to the remaining  
4 value available under the proposed Plan. Through the significant cost savings of the  
5 confirmed Plan as compared to conversion to chapter 7, holders of allowed claims  
6 will receive more under the Plan than they would receive in a converted chapter 7  
bankruptcy (and certainly at least as much as under the Plan).

**Borrego Community Health Foundation**  
Liquidation Analysis  
Proposed Chapter 11 Plan vs. Chapter 7 Plan of Liquidation

*\$ in USD 000's*

|   | <b>Proposed Plan</b> | <b>Chapter 7</b>   | <b>FN</b> |
|---|----------------------|--------------------|-----------|
| Current Cash on Hand                                      | \$ 69,332            | \$ 69,332          | [A]       |
| Cash Burn to Plan Effective Date (ED)                     | (1,628)              | (1,628)            | [B]       |
| <b>Distributable Value at ED</b>                          | <b>\$ 67,705</b>     | <b>\$ 67,705</b>   |           |
| Secured Claims  | (3)                  | (3)                |           |
| DHCS Sales Proceeds Recovery                              | (13,600)             | (13,600)           | [C]       |
| US Trustee Fees   | (250)                | (250)              |           |
| Administrative Claims - Excluding Professional Fees       | (1,939)              | -                  |           |
| Administrative Professional Fee Claims                    | (2,015)              | -                  |           |
| Priority Claims   | (1,435)              | -                  |           |
| <b>Claims to be Paid at ED</b>                            | <b>\$ (19,242)</b>   | <b>\$ (13,853)</b> |           |
| <b>Excess Distributable Value at ED</b>                   | <b>\$ 48,463</b>     | <b>\$ 53,851</b>   |           |
| Litigation Settlement Proceeds                            | 1,500                | 1,500              |           |
| Jared Settlement Proceeds                                 | 105                  | 105                | [D]       |
| Estimated Post-ED Net Payments Due to Buyer               | (1,425)              | (1,425)            | [E]       |
| <b>Distributable Value to be Realized Post-ED</b>         | <b>\$ 48,643</b>     | <b>\$ 54,031</b>   |           |
| Post-ED US Trustee Fees                                   | (750)                | (750)              |           |
| Wind-Down Expenses  | (1,523)              | (1,523)            | [F]       |
| Liquidating Trust Fees                                    | (3,110)              | -                  |           |
| Chapter 7 Trustee Fee (3% of disbursements)               | -                    | (2,372)            |           |
| Chapter 7 Trustee Legal Counsel                           | -                    | (3,000)            | [G]       |
| Chapter 7 Trustee Financial Advisor                       | -                    | (1,100)            | [G]       |
| Cost of Transition from Chapter 11 Debtor's Professionals | -                    | (1,000)            | [H]       |
| Administrative Claims - Excluding Professional Fees       | -                    | (1,939)            |           |
| Administrative Professional Fee Claims                    | -                    | (2,015)            |           |
| Priority Claims   | -                    | (1,435)            |           |
| <b>Administrative &amp; Priority Claims Paid Post-ED</b>  | <b>\$ (5,382)</b>    | <b>\$ (15,133)</b> |           |
| <b>Remaining Value Available for Unsecured Creditors</b>  | <b>\$ 43,260</b>     | <b>\$ 38,898</b>   |           |
| Estimated General Unsecured Claims                        | 11,668               | 11,668             | [I]       |
| <b>Remaining Value for DHCS Claim</b>                     | <b>\$ 31,592</b>     | <b>\$ 27,230</b>   | [C]       |
| <b>Negative Impact of Chapter 7 Scenario</b>              |                      | <b>\$ (4,362)</b>  |           |

**Footnotes to the Liquidation Analysis**

[A]: This reflects the Debtor's Cash on hand as of November 3, 2023.

[B]: The projected uses of Cash include estimated payment of Administrative Claims and Chapter 11 administrative costs incurred before the Effective Date, net of estimated accounts receivable collections.

[C]: Pursuant to the DHCS Settlement Agreement, DHCS will be paid the first 40% of Net Cash Proceeds of the DAP Sale. The remaining cash available after disbursements to Allowed General Unsecured Creditors will be distributed to DHCS in accordance with the Plan and DHCS Settlement Agreement.

[D]: This reflects payments pursuant to the compromise among Debtor, George Jared, D.D.S., and George Jared D.D.S., Inc. [Docket Nos. 761], as approved by this Court's order [Docket No. 824].

[E]: This represents accounts receivable collected on behalf of DAP Health pursuant to the Asset Purchase Agreement after Closing [Docket No. 465], net of any Debtor-related accounts receivable collections.

[F]: This represents the costs of maintaining the Debtor's Estate until the regulatory change of ownership applications are approved, and costs of the subsequent wind-down of the Estate. Expenses include, but are not limited to, regulatory reporting and audits, tax related filings, business software licenses, document storage, and bank fees.

[G]: Chapter 7 trustee advisor fees are estimated to be materially greater than the Liquidating Trust advisor fees given the need for the chapter 7 trustee's professionals to familiarize themselves with the Chapter 11 Case and its complexities.

[H]: This represents an estimate of the costs to transition from the Debtor's current professionals in the Chapter 11 Case to incoming chapter 7 professionals including the costs of information and knowledge transfer by the Debtor's professionals related to outstanding causes of action.

[I]: General Unsecured Claims were based on the mid-point of an estimated allowed claims range of \$6.2 million to \$17.1 million. As set forth herein and in the Plan, General Unsecured Claimants are anticipated to receive 100% recovery on their Allowed Claims.